

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

3 UNITED STATES OF AMERICA § CRIMINAL ACTION
4 VS. § NO. 2:21-CR-25-Z (01)
5 BART WADE REAGOR §

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE MATTHEW J. KACSMARYK
UNITED STATES DISTRICT JUDGE

MARCH 10, 2022

AMARILLO, TEXAS

A-P-P-E-A-R-A-N-C-E-S

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1 PROCEEDINGS FOR MARCH 10, 2022

2 (The following took place in open court with the
3 defendant present.)

4 THE COURT: Please be seated. The Court calls
5 Criminal Action No. 2:21-CR-25-Z-BR (01), United States of
6 America versus Bart Wade Reagor for sentencing.

7 Are the parties ready to proceed?

8 MR. HAAG: Jeffrey Haag on behalf of the United
9 States. We're ready to proceed, Your Honor.

10 MR. MARKHAM: Good morning, Your Honor. John
11 Markham for Bart Reagor, who is present, along with Natalie
12 Archer, our local counsel. We're ready to proceed.

13 THE COURT: And, Mr. Markham, if at any point a
14 different person will speak from your team, just notify the
15 Court, and I will permit that at sentencing. So just make a
16 signal that another member of your team will be speaking, and
17 I'll be lenient on granting latitude for that.

18 MR. MARKHAM: Thank you, Your Honor.

19 THE COURT: Okay. Now, Mr. Reagor, please
20 acknowledge your presence in court today by stating your full
21 name for the record.

22 THE DEFENDANT: Bart Wade Reagor.

23 THE COURT: And, Mr. Reagor, you may participate in
24 this hearing seated or standing, whatever you find most
25 comfortable and whatever is consistent with the advice of

1 counsel.

2 **THE DEFENDANT:** Thank you.

3 **THE COURT:** The Court will make a necessary finding
4 regarding coronavirus, and then we'll proceed with
5 sentencing.

6 The Court is holding this sentencing hearing in the
7 midst of the COVID-19 Coronavirus Pandemic. The court is
8 open to the public, along with an overflow room, consistent
9 with social-distancing protocols.

10 Pursuant to the Seventh Amended Special Order
11 No. 13-9, this Court expressly concludes and hereby finds
12 that this felony sentencing hearing may be conducted in
13 person without seriously jeopardizing public health and
14 safety and cannot be further delayed without serious harm to
15 the interests of justice.

16 And, Mr. Markham, does your client agree to proceed
17 in person notwithstanding coronavirus concerns?

18 **MR. MARKHAM:** He does, Your Honor.

19 **THE COURT:** Okay. Thank you. Now, because of the
20 volume of objections and written work product in this case, I
21 want to lay the groundwork for the evidentiary standards that
22 will be applied. I know those are different than trial
23 standards.

24 The Court reminds the parties of those relaxed
25 standards at sentencing. Here, the Court is guided by Witte

1 *versus United States*, 515 U.S. 389, and 18 U.S.C.
2 Section 3661.

3 Additionally, under Section 6A1.3, the Court may
4 consider information if it bears sufficient indicia of
5 reliability to support its probable accuracy, including
6 reliable hearsay evidence that might not appear at a trial.
7 So keep that in mind when you're making objections to
8 anything that may be elicited from witnesses in this case or
9 character statements. It's a much more relaxed standard.

10 Additionally, out-of-court declarations by an
11 unidentified informant may also be considered where there is
12 good cause for the nondisclosure and sufficient corroboration
13 of the declarations by other means. So if that comes up,
14 this Court will be guided by *United States versus Rodgers*,
15 1 F.3d 341.

16 And, finally, for sentencing purposes, the district
17 court need only find that the elements of an uncharged
18 offense are satisfied by a preponderance of the evidence.
19 Here, the Court will be guided by *United States versus*
20 *Nguyen*, N-G-U-Y-E-N, 854 F.3d 276.

21 And this standard of preponderance would apply to
22 sentencing enhancements, which may be proven by a
23 preponderance-of-the-evidence standard.

24 Now, finally, because the Presentence Report
25 elicited objections and responses and a lot of paperwork,

1 I'll remind counsel that this Court may adopt the facts
2 contained in a PSR without further inquiry if those facts
3 have an adequate evidentiary basis with sufficient indicia of
4 reliability and the defendant does not present rebuttal
5 evidence to otherwise demonstrate that the information is
6 unreliable. And if that comes up, this Court will be guided
7 by *United States versus Cabrera*, 288 F.3d 163.

8 Now, before we begin with the usual recitation of
9 the Indictment and the procedural history of this case, I do
10 want to make a tentative announcement regarding the pending
11 motions for variance.

12 The Court has reviewed the Government's Conditional
13 Motion for Upward Variance — this is in Document No. 142 —
14 and Defendant's Motion for Downward Variance set forth in
15 Documents No. 144 and 145.

16 Based on those documents and information contained
17 in the PSR and the addenda, this Court has tentatively
18 determined that neither a non-guidelines upward variance to
19 300 months' imprisonment nor a non-guidelines downward
20 variance to sentence below the guidelines range are
21 appropriate under the Section 3553(a) factors that are
22 applied to the facts of this case.

23 This Court has made this tentative determination
24 out loud so that the parties have an adequate opportunity to
25 respond with information or argument for or against variance

1 or departure. The correct time to make those arguments is
2 after the Court calculates and announces the advisory
3 guidelines range. So I consider these motions carried
4 forward until such time as we adjudicate the Government's
5 Motion for Upward Variance, Defendant's Motion for Downward
6 Variance, and that will come after the Court calculates the
7 advisory guidelines range.

8 Now, Mr. Reagor, you were named in a three-count
9 Indictment charging you with two counts of Bank Fraud, in
10 violation of 18 U.S.C. Section 1344(2), and one count of
11 False Statement to a Bank, in violation of 18 U.S.C.
12 Section 1014.

13 You appeared before this Court for a criminal trial
14 on October 11, 2021. And then on October 15, 2021, you were
15 convicted by a jury of your peers on the third count, False
16 Statement to a Bank, in violation of 18 U.S.C. Section 1014.

17 At this time, we will turn to the Presentence
18 Report and the addenda, and then also the written objections
19 and responses filed by both the Government and Defendant.

20 First, Mr. Haag, did the Government receive a
21 timely copy of the PSR and the addenda?

22 **MR. HAAG:** Yes, Your Honor, it did.

23 **THE COURT:** Other than the written responses, which
24 are set forth in sealed Documents No. 120 and 130, does the
25 Government have any objections or factual clarification

1 responsive to the PSR and the addenda?

2 MR. HAAG: None other than those filed in writing,
3 Your Honor.

4 THE COURT: Okay. Does the Government adopt the
5 facts and conclusions set forth in the PSR as modified by the
6 first and second addenda?

7 MR. HAAG: Yes, Your Honor, it does.

8 THE COURT: Okay. Mr. Markham, did your client
9 receive a timely copy of the PSR and the addenda?

10 MR. MARKHAM: He did, Your Honor.

11 THE COURT: Did you have a full and complete
12 opportunity to review the PSR and the addenda with your
13 client?

14 MR. MARKHAM: Yes, we did, Your Honor.

15 THE COURT: And did you explain to your client how
16 the PSR and the addenda intersect with this sentencing
17 hearing?

18 MR. MARKHAM: I did. And he understands that, Your
19 Honor.

20 THE COURT: And you're confident that your client
21 fully understands how the PSR and the addenda work as we
22 adjudicate various enhancements and objections?

23 MR. MARKHAM: I am, Your Honor.

24 THE COURT: Okay. Now, because there are so many
25 written responses, objections, and requested factual

1 clarification, the Court has grouped those objections as
2 follows: We'll take up what I have categorized as factual
3 clarifications, and then we will move to the substantive
4 objections.

5 And, as always, the Court will announce its
6 tentative determination on each objection and then invite
7 argument from counsel, but only if the argument is not
8 cumulative of information or written material already before
9 the Court.

10 So let's address the factual clarifications first.

11 Mr. Haag, here, the Government filed six objections
12 requesting factual clarifications to the following PSR
13 Paragraphs: 31, 33, 53, 55, 103, 104, 205, and 211. And
14 those are arguably rendered moot by the combined addenda.

15 Does the Government agree with the Court that the
16 combined addenda corrected the information discussed in the
17 Government's six objections seeking factual clarification?

18 MR. HAAG: Yes, Your Honor, it did.

19 THE COURT: Okay. Now, at this point, does the
20 Government have any untimely objections or requested factual
21 clarifications that are not addressed by the addenda?

22 MR. HAAG: No, Your Honor.

23 THE COURT: Okay. Now, Mr. Markham, by the Court's
24 inventory, Defendant filed seven objections requesting
25 factual clarifications to the following PSR Paragraphs: 13,

1 15, 42, 64, 66, and 93 through 104 that are arguably rendered
2 moot by the combined addenda.

3 Does the Defendant agree with the Court that the
4 addenda corrected the information discussed in Defendant's
5 seven objections seeking factual clarifications such that
6 those objections are rendered moot?

7 **MR. MARKHAM:** We do, Your Honor, as to the factual
8 recitations.

9 **THE COURT:** Okay. And, Mr. Markham, if at any
10 point you need a ruling from the Court on any of those
11 paragraphs that is substantive in nature, we can adjudicate
12 it at that time.

13 **MR. MARKHAM:** Thank you.

14 **THE COURT:** Okay. But as to the factual
15 clarification, the Court agrees with Defense Counsel that
16 those seven objections relevant to PSR Paragraphs 13, 15, 42,
17 64, 66, and 93 through 104 are mooted by the addenda.

18 Okay. Now, does the Defendant continue to urge his
19 remaining objections affecting the advisory guidelines range?
20 I have grouped these as the substantive objections.

21 **MR. MARKHAM:** We do, Your Honor.

22 **THE COURT:** Okay. As I explained at the outset, I
23 will enter a tentative finding objection by objection, and
24 then I'll afford the parties an adequate opportunity to
25 respond with information or argument as long as it is not

1 cumulative.

2 So, here, the Court will address Defendant's
3 written objections in the following sealed documents:
4 No. 126 and 131. Those will be adjudicated alongside
5 Government's written responses set forth in sealed Documents
6 No. 127 and 134. I'd just ask that counsel have those at the
7 ready, and, of course, those will be considered alongside the
8 addenda.

9 Now, regarding guidelines range, this is the first
10 category of substantive objection, and, here, Defendant's
11 written objection to the guideline range set forth in PSR
12 Paragraph 195 will be addressed as the Court further
13 litigates the other objections on downward departure,
14 relevant conduct, intended loss. So I'm going to carry
15 forward that first objection to PSR Paragraph 195.

16 After the other objections are adjudicated, the
17 parties will be provided an opportunity to object to those
18 calculations. So I'm carrying forward Defendant's timely-
19 filed written objection to PSR Paragraph 195.

20 Next, regarding Defendant's objection to the PSR
21 Paragraph 209 and its alleged failure to include grounds for
22 downward departure, the Court will address that when
23 adjudicating Government's pending Conditional Motion for
24 Upward Variance and Defendant's Motion for Downward Variance
25 after determining the appropriate guidelines calculations.

1 So those first two relevant to PSR Paragraph 195
2 and guidelines range and PSR Paragraph 209 will be finally
3 resolved after we take up the objections on particular
4 enhancements or deductions.

5 Now, the first of that series the Court has deemed
6 the floor-plan fraud objections, so, here, Defendant's
7 written objections to the inclusion of the floor-plan fraud
8 as relevant conduct is relevant to PSR Paragraphs 22 through
9 38. The Court tentatively determines as follows:

10 In light of the plain text of
11 Section 1B1.3(a)(1)(B), and in accordance with the application
12 notes thereto, and applicable Fifth Circuit precedent, and
13 the following fact-based determinations, the Court has
14 tentatively determined that it should sustain Defendant's
15 objections to PSR Paragraphs 22 through 38 in part. And I'll
16 now set forth the reasons and the facts that apply.

17 First, Section 1B1.3(a)(1)(B) defines relevant
18 conduct for the sentencing court as follows, quote: "In the
19 case of a jointly-undertaken criminal activity (a criminal
20 plan, scheme, endeavor, or enterprise undertaken by the
21 defendant in concert with others, whether or not charged in
22 the conspiracy), all acts and omissions of the others that
23 were (i) within the scope of the jointly-undertaken criminal
24 activity, (ii) in furtherance of that criminal activity, and
25 (iii) reasonably foreseeable in connection with that criminal

1 activity may be counted as relevant conduct as long as they
2 occurred during the commission of the offense of conviction,
3 in preparation for that offense, or in the course of
4 attempting to avoid detection or responsibility for that
5 offense."

6 So that is the relevant guideline standard.

7 The application note to that section provides
8 further instruction and guidance regarding the limits of
9 relevant conduct.

10 Specifically, Application Note 3 reiterates the
11 three factors the Court must find to determine that
12 defendant's relevant conduct in the case of a
13 jointly-undertaken criminal activity. It states, quote:
14 "When the conduct of others does not meet any one of the
15 criteria set forth in subdivisions (i) through (iii), the
16 conduct is not relevant conduct."

17 The application note further specifies that the
18 Court must determine the scope of the criminal activity the
19 defendant agreed to jointly undertake, and, in doing so, the
20 Court may consider any explicit agreement or implicit
21 agreement fairly attributable or fairly inferred from the
22 conduct of the defendant and others. The accountability of
23 the defendant for the acts of others is limited by the scope
24 of his or her agreement to jointly undertake the particular
25 criminal activity. Acts of others that were not within the

1 scope of the defendant's agreement are not relevant conduct.

2 Now, looking to the Fifth Circuit caselaw relevant
3 to that section, the Fifth Circuit has re-emphasized time and
4 again that determinations of relevant conduct must be based
5 on the sentencing court's findings that the acts were within
6 the scope, that they were in furtherance of the criminal
7 activity, and that they were reasonably foreseeable.

8 Additionally, mere knowledge that criminal activity
9 is taking place is not enough for the sentencing enhancement
10 under Section 1B1.3. That is a direct quote from *United*
11 *States versus Ebuomwan*. That is spelled E-V-B-U-O-M-W-A-N
12 and may be found at 922 F.3d [sic] 70.

13 Relevant here, the scope prong of relevant conduct
14 looks to whether there was a jointly-undertaken criminal
15 activity, and whether the defendant agreed to undertake that
16 criminal activity, and whether the conduct of others was
17 within the scope of defendant's agreement. So, here, the
18 Court is focusing most of its analysis on the agreement
19 element and is guided by *United States versus Allen*, 533
20 F.Appx. 406.

21 In summary, it is insufficient that the subject
22 conduct was merely foreseeable to defendant; rather, in order
23 to constitute a jointly-undertaken criminal activity, the
24 defendant must agree to undertake that activity. That is a
25 direct quote from *United States versus Smith*, 13 F.3d 860.

1 Here, the Government has failed to carry its burden
2 of proving by a preponderance of the evidence that the
3 floor-plan fraud scheme was within the scope of any
4 jointly-undertaken criminal activity.

5 In its document to this Court, No. 127, the
6 Government argues that defendant's ability to separate -- I'm
7 sorry, his inability to separate himself from the
8 corporation, his win-at-all-costs mentality, and his approval
9 of the phrase "other people's money" (OPM) reflects a
10 willingness to defraud lenders so long as it made RDAG, and
11 by extension defendant himself, money.

12 And the Court will make additional reference to
13 some of these terms throughout the hearing. When the Court
14 uses the abbreviation OPM, I'm referring to other people's
15 money, and then RDAG is a reference to the Reagor-Dykes Auto
16 Group.

17 But a determination that the floor-plan fraud
18 scheme is relevant conduct attributable to the defendant
19 requires a showing that there was some agreement, explicit or
20 implicit, between defendant and another person.

21 The Government argues with some force that the
22 agreement was implicit between Defendant Shane Smith and
23 other RDAG employees, as illustrated by defendant's
24 deliberate ignorance toward the floor-plan scheme, and the
25 Government cites various paragraphs in the PSR and trial

1 record that reflects some evidence towards that conclusion.

2 For example, multiple PSR paragraphs reflect
3 defendant's deliberate ignorance and refusal to hear any
4 negative information.

5 PSR Paragraph 69 recalls an RDAG employee's
6 recollection that defendant would return financial reports to
7 Shane Smith and then, quote, "instruct him to try again" if
8 they were not where he wanted them.

9 Additionally, PSR Paragraph 70 reports that
10 defendant was overheard telling Shane Smith that he could
11 never show a loss on a financial statement. He would tell
12 Smith that he, quote, "had not yet worked his magic" and
13 would advise Smith if financial reports were acceptable or
14 not.

15 Additionally, the Court finds additional evidence
16 of defendant's willingness to lie, cheat, steal, and feign
17 ignorance in additional PSR paragraphs.

18 In PSR Paragraph 17, quote: "Some of our managers
19 say cars were on a test drive, and then they found out they
20 weren't on a test drive; they were sold. I guess they are
21 getting a little bit smarter, because the trick I used as a
22 manager doesn't work anymore." That is a quote directly
23 attributable to the defendant.

24 In the following PSR Paragraph 18, defendant is
25 quoted as saying: "I have a selective memory. I remember

1 what I f'ing want to remember, and anything else doesn't
2 f'ing matter." I don't think I need to state for the record
3 what f'ing stands for as an abbreviation.

4 PSR Paragraph 19: "OPM, other people's money.
5 That's how I did it. When you don't have money, you talk
6 other people into giving you their money, so you can use
7 their money to increase your net worth."

8 PSR Paragraph 35: In January 2018, Brian Bruce
9 e-mailed defendant to explain that the claimed 100 to 120
10 trades or sales would be reasonable for a quarter at that
11 relevant dealership, but not the claimed seven-day period.

12 That paragraph further states that Bruce did not
13 continue the e-mail conversation with defendant, quote,
14 "because he did not feel Reagor was receptive or open to that
15 information."

16 And, finally, PSR Paragraph 50: On February 19,
17 2018, defendant sends an e-mail to RDAG employees
18 recommending "power booking" — and that's a direct quote —
19 as a way to overstate and inflate inventory value, and, in
20 response, is rebuffed by his own daughter, in-house counsel
21 Rachel Reagor, who is reported to have said in an e-mail,
22 quote: "We're committing fraud. Fraud is not okay. You've
23 got to stop rationalizing why fraud on our part is the bank's
24 fault."

25 So there is significant PSR and evidentiary support

1 for Government's argument on this enhancement or the
2 application of Section 1B1.3(a)(1)(B), but the guidelines and
3 all Fifth Circuit precedent requires an agreement, and
4 neither the trial evidence nor the PSR reflect by a
5 preponderance of the evidence that defendant entered an
6 agreement with Shane Smith, Steven Reinhart, or other RDAG
7 employees to perpetuate the floor-plan fraud against Ford
8 Motor Company; although, it is a close call.

9 Specifically, the Court finds that Shane Smith
10 testified at trial that, as far as he knew, defendant was
11 unaware of both the floor-plan fraud and check-kiting
12 schemes. That is Trial Transcript, Volume I, Page 270, and
13 that matches PSR Paragraph 59.

14 Second, Smith wrote a letter to his attorney
15 regarding the floor-plan fraud following its uncovering that
16 stated, quote, "Bart Reagor had absolutely no idea or any
17 knowledge of the actions taken that resulted in this
18 situation." That letter was admitted as Government's
19 Exhibit 57 and published to the jury.

20 Third, Steven Reinhart's testimony also belies the
21 existence of any agreement. When asked whether he ever
22 expressly told defendant about the floor-plan fraud, he
23 stated, quote: "No, I did not." That is found at Trial
24 Transcript, Volume II, at Page 373.

25 The Government has also failed to carry its burden

1 of proving by a preponderance of the evidence that the
2 floor-plan fraud scheme was reasonably foreseeable in
3 connection with defendant's criminal activity.

4 Here, the Government's argument is based on the
5 assertion that, by the date of March 2017, defendant knew
6 about the floor-plan fraud, and this assertion is based in
7 part on statements made by the defendant at various RDAG team
8 meetings, ECF No. 127, Exhibits B, C, and D.

9 But, as the Court stated and quoted from Fifth
10 Circuit precedent, mere knowledge is not enough for a finding
11 of relevant conduct under Guideline Section 1B1.3(a)(1)(B).

12 Though the floor-plan fraud information contained
13 in PSR Paragraphs 22 through 38 will not be applied as
14 Section 1B1.3(a)(1)(B) relevant conduct when the Court
15 calculates the advisory guidelines range, this Court will not
16 order the USPO to remove, amend, or modify those paragraphs.

17 Federal Rule of Criminal Procedure 32(d)(2)(G)
18 requires inclusion of, quote, "any information that the Court
19 requires, including information relevant to the factors under
20 18 U.S.C. Section 3553(a)."

21 So though not counted as Section 1B1.3(a)(1)(B)
22 relevant conduct for purposes of calculating the advisory
23 range, PSR Paragraphs 22 through 38 are necessary to fully
24 understand the background facts culminating in the false
25 statements underlying Count Three and defendant's attendant

1 conviction.

2 For these reasons, the Court sustains Defendant's
3 objection in part, but will not instruct the probation
4 officer to remove, amend, or modify PSR Paragraphs 22 through
5 38.

6 Now, Mr. Haag, I know that was a lengthy tentative
7 determination. Does the Government have any information
8 responsive to that tentative determination?

9 **MR. HAAG:** Your Honor, from the Court's preliminary
10 determination and has thoroughly analyzed and reviewed these
11 issues, all the evidence that the United States did have to
12 support including that floor-plan fraud was submitted in
13 writing and in the video exhibits and has nothing further to
14 add. Thank you.

15 **THE COURT:** Okay. And to be clear, Mr. Haag, as I
16 stated, Defendant's objection is sustained in part, but I am
17 not striking those paragraphs. They may be referenced in
18 other arguments and other parts of the sentencing proceeding,
19 because I do think it qualifies for inclusion under FRCP
20 32(d)(2)(G), so this is without prejudice to the Government's
21 ability to reference those PSR paragraphs. They are not
22 stricken or modified in any way.

23 **MR. HAAG:** Thank you, Your Honor.

24 **THE COURT:** Okay. Now, Mr. Markham, does the
25 Defendant have any responsive information or argument that is

1 not cumulative?

2 MR. MARKHAM: No, Your Honor.

3 THE COURT: Okay. The Court hereby adopts this
4 tentative determination as its final finding and will not
5 count the floor-plan fraud scheme PSR Paragraphs 22 through
6 38 as Section 1B1.3(a)(1)(B) relevant conduct in calculating
7 the advisory guidelines range, but does not strike those
8 paragraphs from the PSR for other purposes.

9 Now, if you thought that tentative determination
10 was long, now we move to relevant conduct and loss amount.
11 So regarding Defendant's written objection to the loss amount
12 attributed to defendant under Section 2B1.1 of the guidelines
13 and as reflected in PSR Paragraph 82, the Court tentatively
14 determines as follows:

15 In light of the commentary to Section 2B1.1,
16 applicable Fifth Circuit precedent, and the following
17 fact-based determination, the Court overrules Defendant's
18 objection to PSR Paragraph 82.

19 First, Application Note 3 applies to the
20 determination of loss under subsection (b)(1) of
21 Section 2B1.1. It provides that, quote, "loss is the greater
22 of actual loss or intended loss."

23 An actual loss means, quote, "the reasonably
24 foreseeable pecuniary harm that resulted from the offense."
25 In contrast, intended loss, quote, "means the pecuniary harm

1 that the defendant purposely sought to inflict, and includes
2 intended pecuniary harm that would have been impossible or
3 unlikely to occur."

4 Second, in loan application cases, the court
5 determines intended loss by discerning the defendant's actual
6 intent. And that is a summary of the Fifth Circuit's holding
7 in *United States versus Morrow*, 177 F.3d 272. The Court is
8 guided by that case.

9 Here, if the defendant intended to cause the loss
10 of the entire loan amount or was consciously indifferent or
11 reckless as to the repayment of those loan amounts, then the
12 intended loss is the full amount of the loan. And that is
13 from that *Morrow* case.

14 Here, the Court agrees with the Government that the
15 loss amount attributable to defendant as relevant conduct
16 should be \$10,000,000, the amount of the working capital loan
17 received from IBC Bank, not only the 1.76 million defendant
18 diverted from the loan.

19 Defendant was consciously indifferent or reckless
20 as to the repayment of the loan. This is highlighted in PSR
21 Paragraph 44 where defendant e-mailed Shane Smith and Rick
22 Dykes instructing Smith to transfer 33.3 percent of every
23 dollar borrowed to defendant and Dykes, and knowing that RDAG
24 was in desperate need of working capital to continue
25 operations, it was reasonably foreseeable that this diversion

1 of the loan proceeds would jeopardize RDAG's operations and
2 hinder its ability to repay the working capital loan.

3 Defendant also argues that the \$7,000,000
4 bankruptcy settlement between IBC Bank and RDAG should
5 constitute the loss amount. Defendant made this argument in
6 Document No. 131, and they're relevant to Defendant's
7 objections to PSR Paragraph 55 and the Addendum.

8 However, this argument ignores Application Note 3's
9 explicit instruction that the loss is the greater of actual
10 or intended loss. And, here, the intended loss of
11 \$10,000,000, the full amount of the working capital loan, is
12 greater than the purported actual loss of 7,000,000 or so.
13 Consequently, \$10,000,000 is the correct loss amount.

14 For these reasons and reasons set forth in the
15 Addendum, the Court overrules Defendant's objection.

16 Mr. Haag, does the Government have any information
17 or argument responsive to this tentative determination that
18 is not cumulative?

19 MR. HAAG: No, Your Honor.

20 THE COURT: And, Mr. Markham, does the Defendant
21 have any additional information or argument to this tentative
22 determination that's not cumulative?

23 MR. MARKHAM: No, Your Honor, nothing that we've
24 already not told the Court.

25 THE COURT: Okay. Thank you. And I do want to

1 compliment counsel for the Government and counsel for the
2 Defendant for excellent briefing on all of these objections.

3 I know application of the sentencing manual can
4 feel like calculus at times, and most attorneys went to law
5 school to avoid math. So I appreciate the excellent briefing
6 from both the Government and the Defendant in this case.
7 That definitely assisted the Court in resolving these
8 objections.

9 Now, regarding the sophisticated means enhancement,
10 here, Defendant's written objection to the application of
11 Section 2B1.1(b)(10)(C), the two-level sophisticated means
12 enhancement corresponds to PSR Paragraph 83. The Court
13 determines as follows:

14 In light of the plain text of
15 Section 2B1.1(b)(10)(C), the definition of sophisticated
16 means that appears in Application Note 9(B), and the
17 Sentencing Commission's Commentary on Page 105 of the 2018
18 Supplement to Appendix C, the Court sustains Defendant's
19 objection.

20 Section 2B1.1(b)(10)(C) provides for a two-level
21 increase if, quote, "the offense otherwise involved
22 sophisticated means and the defendant intentionally engaged
23 in or caused conduct constituting sophisticated means."

24 The Application Note 9(B) describes sophisticated
25 means as follows, quote: "An especially complex or

1 especially intricate offense conduct pertaining to the
2 execution or concealment of an offense. Conduct such as
3 hiding assets or transactions, or both, through the use of
4 fictitious entities, corporate shells, or offshore financial
5 accounts ordinarily indicates sophisticated means."

6 But Amendment 792, which became effective on
7 November 1st, 2015, states that the enhancement is focused on
8 defendant's own intentional conduct, not the sophistication
9 of the overall scheme.

10 And, here, the PSR's application of the
11 sophisticated means enhancement is based entirely on the
12 floor-plan fraud scheme. The Court has already determined
13 that the floor-plan fraud does not constitute relevant
14 conduct attributable to the defendant in calculating the
15 advisory guidelines range. And because the floor-plan fraud
16 scheme is not conduct in which the defendant intentionally
17 engaged or caused, the Court will not apply the sophisticated
18 means enhancement.

19 For those reasons and facts, the Court sustains
20 Defendant's objection.

21 Mr. Haag, does the Government have any information
22 or argument responsive to this tentative determination?

23 MR. HAAG: No. Thank you, Your Honor.

24 THE COURT: And does the Defendant have any
25 information or argument responsive to this tentative

1 determination?

2 MR. MARKHAM: No, Your Honor.

3 THE COURT: Okay. Now, the next category of
4 objection applies to the abuse of trust enhancement --
5 enhancement. This correlates to PSR Paragraph 86.

6 And the Court here will consider Defendant's
7 Memorandum in Support of Downward Variance in Document No.
8 145, and I will invite argument from the Government and
9 Defendant after making the Court's tentative determination.

10 Here, Section 3B1.3, Application Note 1, public or
11 private trust refers to a position of public or private trust
12 characterized by professional or managerial discretion (that
13 is, substantial discretionary judgment that is ordinarily
14 given considerable deference).

15 As noted in *United States versus Ollison*, 555 F.3d
16 152, the term "position of trust" is, quote, "a term of art
17 that must be defined through reference to the guidelines
18 commentary and Fifth Circuit caselaw. The district court is
19 instructed that it must be careful not to be overly broad in
20 imposing the Section 1B1.3 [sic] enhancement."

21 In fact, the district court should conduct a
22 two-step inquiry looking at professional or managerial
23 discretion, and comparing that to the minimal supervision
24 reflected in the facts. And as held in *United States versus*
25 *Brown*, 7 F.3d at 1161, quote, "the primary trait that

1 distinguishes a person in a position of trust from one who is
2 not is the extent to which the position provides the freedom
3 to commit a difficult-to-detect wrong."

4 Here, defendant clearly occupied a position of
5 trust in title and deed; as CEO of RDAG, defendant exercised
6 professional or managerial discretion over subordinate
7 employees who directed the finances of the company, including
8 Shane Smith. Consequently, defendant bears no resemblance to
9 the mere bank teller, clerk, or secretary discussed in the
10 *Ollison* opinion.

11 Second, defendant clearly abused his position of
12 trust to significantly facilitate the commission or
13 concealment of the offense. In his position as CEO,
14 defendant ordered the CFO to divert one-third of the working
15 capital loan proceeds to his personal account, in violation
16 of the representations made to the IBC Bank.

17 The PSR and filings of the Government are replete
18 with references to defendant's status as CEO and his bullying
19 manner of my-way-or-the-highway attitudes.

20 As described in PSR Paragraph 66, despite Shane
21 Smith's belief that the use of the loan for personal reasons
22 was deceitful, unacceptable, and contrary to the loan's
23 purpose, he followed instead defendant's instructions
24 nonetheless because of defendant's demands, actions, and
25 attitude as CEO.

1 And in his instructions to Shane Smith, defendant
2 ordered that the plan to distribute one-third of the capital
3 loan between him and Rick Dykes was to be highly
4 confidential, and the banks were not to know.

5 Applying the two-step test required by the Fifth
6 Circuit, the Court finds by a preponderance of the evidence
7 that, No. 1, defendant occupied a position of trust, and,
8 No. 2, defendant used his position as CEO to significantly
9 facilitate the commission or concealment of the offense.

10 For these reasons and facts identified, the Court
11 overrules Defendant's objection to the abuse of trust
12 enhancement as set forth in his Memorandum for Downward
13 Variance.

14 Does the Government have any information or
15 argument responsive to this tentative determination?

16 **MR. HAAG:** No. Thank you, Your Honor.

17 **THE COURT:** And, Mr. Markham, does the Defendant
18 have any information or argument responsive to this tentative
19 determination?

20 **MR. MARKHAM:** Nothing further, Your Honor. Thank
21 you.

22 **THE COURT:** Next, the aggravating role enhancement.
23 This correlates to PSR Paragraph 87.

24 Regarding Defendant's written objection to the
25 application of the four-level Section 3B1.1 aggravating role

1 enhancement, the Court determines as follows:

2 In light of the plain text of Section 3B1.1, the
3 Court's ruling on relevant conduct, and the following
4 fact-based determination, the Court overrules Defendant's
5 objection in part.

6 First, Section 3B1.1 provides for a four-level
7 enhancement, quote, "if the defendant was an organizer or
8 leader of a criminal activity that involved five or more
9 participants or was otherwise extensive;" a three-level
10 enhancement, quote, "if the defendant was a manager or
11 supervisor (but not an organizer or leader); and, finally, a
12 two-level enhancement, quote, "if the defendant was an
13 organizer, leader, manager, or supervisor in any criminal
14 activity other than described in (a) or (b)."

15 That is followed by Application Note 4, which
16 provides a non-exhaustive list of factors that the Court may
17 consider, including the exercise of decision-making
18 authority, the nature in participation in the commission of
19 the offense, the recruitment of accomplices, the claimed
20 right to a larger share of the fruits of the crime, the
21 degree of participation in planning or organizing, the nature
22 and scope of the illegal activity, and, finally, the degree
23 of control and authority exercised over others.

24 Here, based on the Court's previous ruling that the
25 floor-plan fraud is not relevant conduct attributable to

1 defendant in calculating the advisory range, there was no
2 criminal activity involving five or more people which
3 defendant organized or led.

4 Therefore, the Court will not apply the four-level
5 enhancement under Section 3B1.1(a). So Defendant's objection
6 is sustained to that extent.

7 But the Court will apply the two-level enhancement
8 under Section 3B1.1(c) for his organizing, leading, and
9 supervision of the bank-loan fraud against IBC Bank.

10 Evidence at trial, and reflected in the PSR, reveal
11 that defendant ordered Shane Smith to divert loan proceeds of
12 the IBC working capital loan into his personal account.

13 Additionally, PSR Paragraphs 39 through 56 recount
14 the facts of defendant's false statements to IBC and his
15 leadership and organization in support of that effort. PSR
16 Paragraphs 41 and 43 relates how RDAG, via defendant and
17 Shane Smith, represented to IBC its extraordinary growth, its
18 performance above competition, and its successful management
19 in order to secure that \$10,000,000 working capital loan, and
20 they stated that it would be utilized to, quote, "sustain
21 growth goals" and provide each RDAG equity in a sizeable cash
22 cushion.

23 Finally, PSR Paragraph 45 records the e-mail sent
24 from defendant to Shane Smith and Rick Dykes, instructing
25 Shane Smith to allocate, quote, "33.3 percent of every dollar

1 we borrow" to the persons identified, the defendant and Rick
2 Dykes.

3 That e-mail goes on to instruct Smith, quote: "How
4 we are going to manage this capital is 100,000,000 percent
5 confidential. It is between us, and it is not anyone else's
6 business. No bankers or anyone else. Our business. Game
7 on," end quote.

8 Based on this evidence, which the Court observed at
9 trial and reviewed through the PSR, the Court finds by a
10 preponderance of the evidence that defendant was an organizer
11 and leader of the loan fraud committed against IBC Bank.
12 Consequently, this Court will apply the Section 3B1 point --
13 3B1.1(c) two-level aggravating role enhancement.

14 So for those reasons, the Court overrules
15 Defendant's objection, but will apply the two-level
16 enhancement, not the four- or three-level enhancements.

17 Does the Government have any argument or
18 information responsive to this tentative determination?

19 **MR. HAAG:** No. Thank you, Your Honor.

20 **THE COURT:** Does the Defendant have any argument or
21 information responsive to this tentative determination?

22 **MR. MARKHAM:** No, Your Honor.

23 **THE COURT:** Okay. Next, regarding restitution
24 amount, here, Defendant objected to the restitution amount
25 set forth in PSR Paragraph 205 through 211. The Court

1 tentatively determines as follows:

2 In light of Fifth Circuit precedent, Section 5E1.1,
3 and the following fact-based determination, the Court
4 overrules Defendant's objection in part.

5 First, the general rule is that a district court
6 can award restitution to victims of the offense, but the
7 restitution award can encompass only those losses that
8 resulted directly from the offense for which the defendant
9 was convicted. This is from *United States versus Burns [sic]*,
10 740 F.3d 370.

11 Here, defendant was convicted of making a false
12 statement to IBC Bank and was not convicted on anything
13 related to the floor-plan fraud scheme perpetuated against
14 Ford Motor Credit Company. Therefore, restitution should be
15 paid only to IBC Bank, not to Ford Motor Credit Company.

16 Second, Section 5E1.1(a)(1) instructs, quote, "in a
17 case of an identifiable victim, the court shall enter a
18 restitution order for the full amount of the victim's
19 losses."

20 Additionally, a restitution award is limited to
21 that amount that is reasonably foreseeable to the defendant.
22 And that's from *In re Fisher*, 640 F.3d 645.

23 As noted by the Government in their response to
24 Defendant's objections, IBC has confirmed their actual loss
25 from the loan fraud at nine million, three hundred and

1 seventy-eight dollars and eighty-seven -- I'm sorry,
2 \$9,378,871.28. I'll read that number by number 9378871.28.
3 And the Addendum concurs with this restitution amount.

4 As explained previously, the amount of the working
5 capital loan was a reasonably foreseeable loss because
6 defendant knew that RDAG needed capital and could reasonably
7 foresee that a diversion of one-third of these loan proceeds
8 could severely hinder RDAG's operations and hinder the
9 ability to pay off that working capital loan.

10 For these reasons, the Court overrules Defendant's
11 objection in part and will not order restitution to be paid
12 to Ford Motor Credit Company, but the Court will order
13 restitution in the amount of \$9,378,871.28, the actual
14 amount, the actual loss amount, to IBC Bank rather than
15 Defendant's argued 1.76 million.

16 Does the Government have argument or information
17 responsive to this tentative determination?

18 **MR. HAAG:** Your Honor, we have one clarification.
19 I believe the loss amount for restitution purposes should be
20 \$9,378,817 as opposed to \$871.

21 **THE COURT:** And 28 cents?

22 **MR. HAAG:** Yes, Your Honor.

23 **THE COURT:** For purposes of the tentative
24 determination and the Court's analysis, the Court accepts the
25 Government's reading of the file. And I believe it was just

1 a scrivener error the Court wrote 871. It should be 817. So
2 that the final number is \$9,378,817.28.

3 With that modification, does the Government have
4 any additional argument or information responsive to that
5 restitution determination?

6 MR. HAAG: No. Thank you, Your Honor.

7 THE COURT: And, Mr. Markham, does the Defendant
8 have any information or argument responsive to that tentative
9 determination?

10 MR. MARKHAM: Two very minor points. First, I
11 agree with the correction made for the record.

12 Also, Your Honor, there is a bankruptcy proceeding
13 going on that could result in additional payments to Ford
14 Motor Company, and that in the future could reduce the
15 restitution. IBC, I apologize, IBC.

16 And because IBC is in that bankruptcy and there
17 could be a reduction, we would reserve the right to come back
18 and make a proper motion for a reduction if we can show that
19 that happened, and I -- that's the only comment I'd like to
20 make.

21 THE COURT: Okay. The Court enters its finding
22 subject to that reservation of right and that preservation of
23 right for appellate review.

24 Here, 18 U.S.C. Section 3663(a)(1) states that,
25 notwithstanding any other provision of law, when sentencing a

1 defendant convicted of an offense described in subsection
2 (c), the Court shall order the defendant make restitution to
3 the victim of the offense. Thus, restitution is mandatory in
4 this case.

5 But this ruling and any judgment to follow is
6 without prejudice to a Motion to Reconsider pursuant to
7 18 U.S.C. Section 3582(c). That relates to modification of
8 an imposed term of imprisonment, or, more precisely, a Motion
9 Seeking Correction, Appeal, Modification, Amendment or
10 Adjustment pursuant to 18 U.S.C. Section 3664(o)(1). So I
11 believe that's the restitution section that permits
12 correction, appeal, modification, amendment, or adjustment of
13 a restitution award.

14 So this Court's ruling on this particular objection
15 is without prejudice to his right to seek motions under
16 Section 3582(c) and Section 3664(o)(1).

17 Does that satisfy the finding that you need for the
18 record?

19 **MR. MARKHAM:** It's the one I wanted. Thank you,
20 Your Honor. Yes, it does.

21 **THE COURT:** Okay. And the Court does agree with
22 Defense Counsel's adroit assessment of restitution law and
23 how it intersects with other proceeding, and I agree that
24 that finding should be made for the record.

25 So with that -- with that finding reserved, the

1 Court adopts the tentative determination as its final finding
2 and does adopt the findings and conclusions set forth in the
3 relevant Addendum paragraphs and the relevant restitution
4 amounts.

5 Okay. That felt like algebra and calculus.

6 Does the Government have any untimely objections or
7 requested factual clarifications relevant to the PSR or the
8 addenda?

9 MR. HAAG: No. Thank you, Your Honor.

10 THE COURT: Okay. Having adjudicated all those
11 motions and enhancements, does the Defendant have any
12 untimely objections or requested factual clarifications
13 relevant to the PSR or addenda?

14 MR. MARKHAM: The Defense does not.

15 THE COURT: Okay. Having ruled on the parties'
16 timely-filed written objections and requested factual
17 clarifications, the Court adopts the remaining findings and
18 conclusions of the PSR and the addenda in their entirety.

19 And now we will calculate the advisory guidelines
20 range pursuant to the federal statutes and the 2021
21 Guidelines Manual.

22 Here, the Court is applying the brand-new maize and
23 blue 2021 Guidelines Manual. We've used the 2018 Guidelines
24 Manual for almost three years, so we now have to determine
25 whether application of this new manual presents any *ex post*

1 *facto* problems or any constitutional infirmities.

2 Does the Government agree with the Court that there
3 are no *ex post facto* problems or constitutional reasons not
4 to apply the 22 -- 2021 Guidelines Manual to this case?

5 **MR. HAAG:** The Government agrees, Your Honor.

6 **THE COURT:** Does the Defendant agree with that
7 assessment as well?

8 **MR. MARKHAM:** Yes, Your Honor.

9 **THE COURT:** Okay. We will apply the 2021
10 Guidelines Manual.

11 And, Mr. Markham, you should get your fresh copy.
12 I know it's been awhile since we've had a new manual, so
13 we're on to the blue manual.

14 **MR. MARKHAM:** Your Honor, the one that I saw in the
15 law offices was the same date, but it was blood red, which
16 Defense kind of thinks is the appropriate color.

17 (**Laughter.**)

18 **THE COURT:** Well, when I was an AUSA, I had an
19 entire shelf filled with multicolored sentencing guideline
20 manuals. And then they just stopped producing them for about
21 three or four years, so I just wanted to be clear that we're
22 using this new 2021 manual.

23 Okay. Before entering the Court's calculations of
24 the advisory guidelines range, I want to note the applicable
25 statutory maximums that were reflected in the PSR and that

1 could be applied in this case.

2 Here, the statutorily-authorized maximum sentence
3 is thirty years, and the statutorily-authorized maximum fine
4 is up to \$1,000,000.

5 But having considered the probation officer's
6 calculations and conclusions and having ruled on Defendant
7 and Government's objections thereto, the Court determines
8 that the correct advisory guidelines range is as follows:
9 Total Offense Level 33. Criminal History Category I. An
10 imprisonment range of 135 to 168 months. A supervised
11 release range of two to five years. A fine range of 35,000
12 up to \$1,000,000. And restitution in the amount of
13 \$9,378,817.28.

14 Mr. Haag, is that the correct number?

15 **MR. HAAG:** Yes, Your Honor, it is.

16 **THE COURT:** Okay. Now, does the Government have
17 any objection to the Court's calculation of the advisory
18 guidelines range?

19 **MR. HAAG:** No, Your Honor.

20 **THE COURT:** Does the Defendant have any objections
21 to the Court's calculation of the advisory guidelines range?

22 **MR. MARKHAM:** No, Your Honor, other than previously
23 stated.

24 **THE COURT:** Okay. But Defendant does not think the
25 Court has miscalculated the advisory guidelines range as a

1 starting point?

2 MR. MARKHAM: I do not, Your Honor.

3 THE COURT: Okay. The other objections that were
4 filed, those are preserved for appellate review, and I find
5 that those were timely filed, and they have been adjudicated,
6 and they are preserved for appellate review.

7 MR. MARKHAM: Your Honor's arithmetic was correct,
8 yes.

9 THE COURT: Okay. Got it. Now, as announced, the
10 Court has tentatively determined that neither a
11 non-guidelines upward variance to 300 months' imprisonment
12 nor a non-guidelines downward variance to a sentence below
13 the advisory range is appropriate pursuant to the 3553(a)
14 factors the Court is to apply to this case.

15 Now, in simultaneously adjudicating the
16 Government's Motion for Upward Variance and Defendant's
17 Motion for Downward Variance, I will recite the 3553(a)
18 factors one by one and the facts related to those factors.
19 And then at the end of that, I will allow counsel to argue
20 any factor or any fact as long as those arguments are not
21 cumulative.

22 First, pursuant to Section 3553(a)(1), which
23 requires the Court to consider the history and
24 characteristics of the defendant, which does include no prior
25 criminal convictions.

1 However, the sentencing file is replete with
2 instances and events reflecting defendant's character as a
3 self-aggrandizing bully, whose wanna-win-more-than-you-wanna-
4 live mentality, and deliberate ignorance, at worst, or
5 dereliction of duty, at best, resulted in the collapse of his
6 RDAG empire, the unemployment of over 600 employees, and
7 financial harm to many customers, many of whom defendant
8 called friends.

9 Though the Offense Level Computation included zero
10 enhancement, levels, or adjustments for floor-plan fraud,
11 bank fraud, or check-kiting, the trial record and multiple
12 PSR paragraphs reflect that his intimidating and verbally
13 abusive leadership style pressured myriad RDAG employees to
14 lie, cheat, and steal on his behalf.

15 PSR Paragraph 66: Defendant, quote, "did not want
16 to hear negative news," and further instructed Shane Smith
17 to, quote, "find a way" to make the numbers work.

18 PSR Paragraph 68: Despite Shane Smith's repeated
19 reports of, quote, "financial hardships," defendant demanded
20 growth, with religious zeal.

21 PSR Paragraph 69: If the financial reports were
22 not where defendant wanted them, quote, "he would return them
23 to Smith and tell him to try again."

24 PSR Paragraph 70: Defendant stated that, quote,
25 "RDAG could never show a loss on a financial statement."

1 PSR Paragraph 72: Defendant told Shane Smith,
2 quote: "I want this f'ing number, and you find a way to make
3 it happen. I don't care how you do it, just make it f'ing
4 work."

5 Additionally, various PSR paragraphs and sentencing
6 exhibits illustrate that defendant was a bully in the
7 workplace, specifically PSR Paragraph 72. Those bullying
8 tactics created a hostile work environment where employees
9 must lie to maintain the myth.

10 In PSR Paragraph 70, one employee described
11 defendant's intense emotion during meetings, and on one
12 occasion he punched a whiteboard and threatened to F anyone
13 up who came between him and his company.

14 In another meeting, defendant stated, quote: "I
15 guarantee they don't want to get in my f'ing way, because
16 they know they will get f'ed up. You get in the path of me,
17 you get in the path of your life -- you get in the path of
18 me, you get in the path of your life is in danger. Don't try
19 to stop me." That's a direct quote from PSR Paragraph 14.

20 Additionally, Shane Smith described defendant as
21 intimidating and verbally abusive to staff, which often made
22 them cry. That is from PSR Paragraph 59.

23 Finally, as an exhibit to the Government's Response
24 to written objections, defendant compared those who could
25 sell only five cars a month as lepers in the Bible, who would

1 be, quote, "put off on an island with all the other lepers"
2 to die together, and in addressing new employees, said, if
3 you're a dumbass, and you're stupid, and you're weak, get the
4 F out of here.

5 Consequently, for these reasons and facts, RDAG
6 employees were made responsible for delusional business
7 growth, told that losses were unacceptable, and tasked with
8 making the numbers work, and therefore pressured to
9 perpetuate one of the largest frauds in the history of the
10 American automobile industry.

11 Defendant's mismanagement, mistreatment, and
12 malfeasance ensnared fifteen subordinate employees who
13 planned and executed the lies and deception, culminating in a
14 combined 453 months' imprisonment for the participating RDAG
15 office managers, accounting controllers, and administrators.

16 Shane Smith, 84 months;

17 Steven Reinhart, 6 months;

18 Diana Herrera Urias, 24 months;

19 Mistry Canady, 24 months;

20 Sheila Evans Miller, 27 months;

21 Lindsay Claire Williams, 27 months;

22 Paige Anna Johnston, 27 months;

23 Whitney Erin Maldonado, 27 months;

24 Elaina Marie Cabral, 27 months;

25 Ashley Nicole Dunn, 30 months;

1 Sherry Lynn Wood, 30 months;
2 Wesley Todd Neel, 30 months;
3 Brad William Fansler, 42 months; and
4 Pepper Lay -- Laray Rickman, 48 months.

5 Next, pursuant to Section 35 -- pursuant to
6 Section 3553(a)(2)(A), which requires the Court to consider
7 the nature and circumstances of the offense, to reflect the
8 seriousness of, and to provide just punishment for the
9 offense, here, defendant made a false statement to IBC Bank
10 regarding the purpose of a \$10,000,000 working capital loan.

11 As reflected in PSR Paragraph 39, defendant and
12 Shane Smith represented to IBC that the purpose of the
13 working capital loan was to provide working capital funds to
14 RDAG. Specifically, defendant represented to IBC that RDAG
15 needed a working capital loan because of the company's
16 alleged rapid growth and undercapitalization. That is
17 referenced in PSR Paragraph 44.

18 That same paragraph reflects that, during those
19 conversations and meetings with IBC, defendant failed to
20 disclose any intent to use any part of the loan for personal
21 reasons.

At trial, William Schonacher, President and CEO of IBC Bank, testified that the loan would not have been awarded had the bank been aware of any intent to use part of the loan for defendant's personal use. That is further reflected in

1 PSR Paragraph 57.

2 Here, defendant instructed Shane Smith, his CFO, to
3 distribute 33.3 percent of every borrowed dollar to the
4 defendant and Rick Dykes. This management of capital, he
5 instructed, was to be confidential and not the business of
6 any bank or anyone else.

7 When RDAG collapsed and defaulted on the note, IBC
8 filed a civil lawsuit against defendant and RDAG, and the
9 final judgment in that suit awarded IBC Bank \$23,865,778.48.
10 At the time, this was the largest loss of default suffered by
11 that bank in its history. That's reflected in PSR
12 Paragraph 55.

13 Next, pursuant to Section 3553(a)(2)(C), which
14 requires the Court to promote respect for the law, to afford
15 adequate deterrence to criminal conduct, and to protect the
16 public from further crimes of the defendant, who at this
17 point has not accepted responsibility for his criminal action
18 and is blaming everyone but the person truly responsible,
19 himself.

20 Instead, defendant referred to the jury verdict as
21 nonsensical, describing it as a, quote, "compromise" because
22 there was no proof of any wrongdoing, including making false
23 statements. Those comments are reflected in PSR
24 Paragraph 110.

25 He further decried the banks for their greed,

1 rather than his own. That's reflected in PSR Paragraph 117.

2 He alleged that the Government prosecuted him to
3 protect Ford Motor Credit Company, without evidence or proof.
4 That's reflected in PSR Addendum Paragraph 129(a).

5 He further lambasted this Court for denying his
6 motions of acquittal. That's reflected in PSR Paragraph 129.

7 And he additionally exclaimed that the justice he
8 received was not the, quote, "freedom and justice we deserve"
9 for which our forefathers fought. That's in PSR
10 Paragraph 125.

11 And, most bold of all, he has now painted himself
12 as a victim, claiming that his family, quote, "was defrauded
13 more than anyone else involved." That's reflected in PSR
14 Paragraph 117. He insisted that his victims, they were,
15 quote, "the biggest losers in this situation." That's a
16 statement recorded in PSR Paragraph 128, despite the combined
17 453 months of imprisonment doled out to his former
18 associates.

19 In summary, defendant claimed credit for every RDAG
20 accomplishment when times were good, but then denied
21 responsibility when RDAG collapsed under the weight of all
22 the lies, deception, and dishonesty.

23 If not for the collapse of RDAG and the
24 investigative efforts of the FBI, defendant would have
25 continued in the false belief that the banks and lenders were

1 the fraudsters, not defendant himself, and he likely would
2 have continued in the criminal enterprise but for the
3 intervention of law enforcement.

4 So each of those 3553(a) factors and related facts
5 the Court considers aggravating factors.

6 But these 3553(a) factors and facts must be
7 balanced alongside the following mitigating factors: No. 1,
8 defendant's manifest and evident love and care for his
9 family. That is reflected in the PSR statements and the 93
10 character statements filed on his behalf and submitted to
11 this Court.

12 For these reasons, the Court has tentatively
13 determined that a non-guidelines upward variance to
14 300 months' imprisonment is not necessary, but that a
15 non-guidelines downward variance to a sentence below the
16 advisory guidelines range is insufficient.

17 And, with that, the Court is adjudicating the
18 Government's pending Motion for Upward Variance, the
19 Defendant's pending Motion for Downward Variance, and I will
20 invite argument with specific attention to the 3553(a)
21 factors the Court must apply.

22 We will begin with the Government, and then, Mr.
23 Markham, you will be allowed a full opportunity to argue for
24 or against variance. But we'll begin with Mr. Haag.

25 **MR. HAAG:** Thank you, Your Honor. Your Honor, the

1 United States has a sentencing presentation that's prepared
2 on a PowerPoint. If this would be the appropriate time, we
3 are prepared with that presentation now.

4 **THE COURT:** Any objection from the Defense?

5 **MR. MARKHAM:** Not to the presentation, Your Honor,
6 but we would comment on it afterwards, yes.

7 **THE COURT:** Yes. And, Mr. Haag, you understand if
8 you use it, Defense Counsel may make reference to it and
9 argue against it as well, as it is a demonstrative. Is that
10 correct?

11 **MR. HAAG:** Yes, sir.

12 **THE COURT:** Okay. You may proceed accordingly.
13 And I'll just instruct court staff and IT personnel to be
14 prepared to play any relevant media.

15 **MR. HAAG:** Your Honor, if I may, I'm going to move
16 into evidence at this time Government's Exhibit No. 1.
17 That's the CD with the videos on it from the sentencing
18 exhibit.

19 **MR. MARKHAM:** No objection.

20 **THE COURT:** Okay. They are admitted without
21 objection. They'll be marked as Exhibit 1 to this sentencing
22 hearing and made a part of the record on appeal.

23 **MR. HAAG:** In looking at the defendant's beginning
24 social media posts, he put a quote that reads as follows, and
25 it's captured in PSR Paragraph 115: And you will know the

1 truth, and the truth will set you free.

2 For today's presentation, I want to talk about the
3 truth. I want to talk about the truth and play some clips of
4 the defendant's version of the truth, and then present to the
5 Court what the truth actually is.

6 (CD clip played and transcribed as follows:)

7 MR. REAGOR: "I said these customers are not going
8 to get their cars registered. These customers are not going
9 to get their trades paid off. I mean, I was throwing a cow
10 about it because my customers are my friends, and they always
11 have been, even like those people out there, and I don't want
12 to let them down, but, I mean, I didn't have any choice. I
13 didn't have the money. All of -- I mean, all the money I
14 had, everybody had -- took from me. So, I mean, there was
15 nothing I could do."

16 (CD paused.)

17 MR. HAAG: In this clip, the defendant does a
18 television interview after the trial and leaves the viewers
19 with the impression that, after the collapse of RDAG, he was
20 penniless. He had no money left at all.

21 But the truth is, the defendant on December 31st,
22 2016 claimed total assets of about \$31,000,000.

23 More recently, when we look at 2021, in the first
24 bond report, the defendant claimed \$1.88 million in assets.
25 About four days later, his wife was able to help him remember

1 additional assets, which increased that number to
2 \$3.4 million.

3 In short, Your Honor, the truth is, the defendant
4 had money. The defendant has plenty of money, but he kept it
5 for himself. He did not give that money to the RDAG
6 entities. He did not give that money to the bankruptcy
7 estate to help his customers. He kept it, and he kept it for
8 one simple reason, greed.

9 **(CD clip resumed and transcribed as follows:)**

10 MR. REAGOR: "You know, I mean, I'm an honest guy.
11 I mean, this -- I didn't have anything to do with any of this
12 fraud."

13 **(CD paused.)**

14 MR. HAAG: Later in the interview, he claims he has
15 absolutely no knowledge of the fraud. And the Court's
16 discussed that a little bit already, but I think some videos
17 are important because they capture better than any written
18 product could capture exactly what he knew.

19 **(CD clip resumed and transcribed as follows:)**

20 MR. REAGOR: "That means I don't want anybody
21 fabricating documents for an audit."

22 **(CD paused.)**

23 MR. HAAG: Now, in this statement, the defendant
24 says, "I don't want anybody fabricating documents for an
25 audit." And undoubtedly Defense Counsel will point out

1 defendant said don't do it, but that misses the mark.

2 The point is, the defendant doesn't have to tell
3 his employees don't fabricate documents for an audit unless
4 he knows they're doing it.

5 And I want to give an example that might hit a
6 little closer to home for this Court and what it would see.
7 This would be like a narcotics lieutenant walking into a
8 meeting with his narcotics officers and saying: Internal
9 Affairs is coming around. That means I don't want anybody
10 planting evidence on suspects.

11 Any rational person's reaction would be, wait,
12 what? You're planting evidence? That's not a hey, don't do
13 it. That is a badges on the table; everybody's on
14 administrative leave; and we get to the bottom of it.

15 It gets worse.

16 (CD clip resumed and transcribed as follows:)

17 MR. REAGOR: "We had some of our managers say that
18 cars were on a test drive, and then they found out that they
19 weren't on a test drive; they were sold. And, you know, I
20 guess they're getting a little bit smarter, because that old
21 trick that I learned when I was a manager don't work
22 anymore."

23 (CD paused.)

24 MR. HAAG: In this clip, the defendant acknowledges
25 that his managers are lying to auditors, lying to their

1 faces, saying cars are on a test drive when, in fact, those
2 cars were sold. And how does he react to that? He laughs.
3 Laughs it off as an old trick.

4 **(CD clip resumed and transcribed as follows:)**

5 MR. REAGOR: "Some of our stores were not operating
6 very well. Okay? It's not because we had an audit. It's
7 because we didn't pass the audit. You know, if we had an
8 audit -- I mean, if we were doing our job, the audit wouldn't
9 be a problem. You see what I'm saying?

10 "I mean, so the truth of the matter is, is that
11 Ford Motor Credit might have saved me and Rick Dykes a lot of
12 money by doing an audit, and they might have protected us
13 from a big ass fucking disaster by doing an audit. Okay?

14 "So what I need you dipshits to do, some of y'all,
15 is clean the fucking shit up and let's roll. Okay? You guys
16 that's running it clean, thank you. You guys that aren't,
17 clean it up."

18 **(CD paused.)**

19 MR. HAAG: This video was from March 2017 after one
20 of the failed audits with Ford, and it demonstrates to the
21 Court that the defendant had full knowledge, not only of the
22 fraud that was going on, but the scope of that fraud.

23 We didn't ask that this be included in relevant
24 conduct, but it certainly comes into play for sentencing
25 purposes. In addition to the floor-plan fraud, Reagor-Dykes

1 was engaged in a massive check-kiting scheme. And here in
2 this e-mail from the President of Vista Bank, he writes
3 directly to the defendant and alerts him that there's a
4 negative balance of \$1,018,504 -- I'm sorry, eighteen
5 million -- \$1,018,504.03.

6 The defendant's response to that e-mail is, I just
7 read this e-mail, and I don't ever want to get an e-mail like
8 that again.

9 Moving towards the bottom, I don't want any red
10 flags ever. We are doing too good to ever have any red
11 flags.

12 What this demonstrates to the Court is what it's
13 already alluded to. The defendant had full knowledge of what
14 was going on at his company, but he didn't want to hear about
15 it.

16 (CD clip resumed and transcribed as follows:)

17 MR. REAGOR: "So don't have any skeletons, see. I
18 don't have any, and if I had any, I already forgot them. I
19 got a selective memory. I remember what I fucking want to
20 remember, and everything else doesn't fucking matter."

21 (CD paused.)

22 MR. HAAG: What the defendant is talking about in
23 this clip is what the law recognizes as a concept called
24 deliberate ignorance.

25 And from the Fifth Circuit Pattern Jury

1 Instructions, deliberate ignorance is: You may find the
2 defendant had knowledge of a fact if you find that the
3 defendant deliberately closed his eyes to what would
4 otherwise have been obvious to him. While knowledge on the
5 part of the defendant cannot be established merely by
6 demonstrating that the defendant was negligent, careless, or
7 foolish, knowledge can be inferred if the defendant
8 deliberately blinded himself to the existence of a fact.

9 And that is exactly what the defendant did here.

10 (CD clip resumed and transcribed as follows:)

11 MR. REAGOR: "We had a bad audit in Lamesa. I
12 mean, nothing like millions of dollars. It was 400,000 back
13 then because it was small. But, I mean, that was a lot to me
14 back then, and I was like what's going on, you know?

15 "And so I made Shane start giving me a bank balance
16 report. Back then, we had only about five accounts. By the
17 time all of this happened at Reagor-Dykes Auto Group, I had
18 five pages of accounts. You know, we probably had 250
19 accounts, banking accounts."

20 (CD paused.)

21 MR. HAAG: And, again, turning to the deliberate
22 ignorance, the logical takeaway from this segment of the
23 video clip is: Why do I have five bank accounts when we
24 start, and why do I now have 250 accounts? If my company is
25 doing so well, how am I \$1,000,000 overdrawn in my bank

1 account?

2 And these questions that any reasonable, rational,
3 ethical chief executive officer would have been alerted to
4 would have delved further, would have found the answers, but
5 the defendant didn't want to hear any of this and
6 deliberately blinded himself to it.

7 **(CD clip resumed and transcribed as follows:)**

8 **MR. REAGOR:** "If anything, I probably -- I mean, I
9 had these five disciplines and these twelve rules of the
10 Reagor-Dykes Auto Group, and both of them -- I mean, it was
11 for salespeople, for managers, I mean, and never misrepresent
12 any -- anything to a lender.

13 "I mean, when you sell the number of cars we have
14 and you have the number of employees we have, there's always
15 a temptation for people that are -- you know, we dealt with a
16 lot of lenders and say, you know -- and there's always a
17 temptation for the people that are submitting these car deals
18 to these lenders to try to help people out, but you just
19 can't do it. You don't misrepresent anything to a lender.
20 And that went for everybody, you know.

21 "And so, I mean, the only one way -- there's only
22 one way to do things, and that's the right way, you know. If
23 you're going to win, and you're going to win for a long time,
24 and you're going to build something big and something great,
25 you gotta do things right and -- or eventually it's going to

1 catch up to you."

2 (CD paused.)

3 MR. HAAG: So here this clip, the defendant tells
4 in the interview after his trial that I said not to lie to
5 lenders.

6 Let's look at the truth. This is a lengthier
7 description of power booking, but this illustrated model is
8 perhaps easier to understand.

9 So here on the left, this is what the customer is
10 actually buying. And just for example, the customer is
11 buying a Ford F-150 base model pickup truck. The bank is not
12 going to loan the full purchase price of that car. They're
13 going to loan a percentage.

14 Well, some customers, they can't afford, unless the
15 bank finances the full purchase price. So what the unethical
16 car dealer does is, they tell the bank the customer is
17 purchasing a Ford F-150 King Ranch Edition loaded with all
18 the options, so that the bank loans an amount to cover the
19 car on the left. In fact, that's not what the customer is
20 getting.

21 And the problem happens when that customer defaults
22 on paying that auto loan, and the bank repossesses the
23 vehicle. And when it's thinking it's going to sell an F-150
24 King Ranch and get its money back, it's stuck with a base
25 model F-150.

1 In the e-mail that the Court referenced earlier,
2 this was the defendant's take on that situation. In the
3 scenario talked about, everybody above wins. The bank wins;
4 they get the loan they want. The customer wins; they get the
5 car they want. The sales team wins.

6 And I applaud counsel for the Reagor-Dykes Auto
7 Group for being so candid in her assessment of what the
8 defendant was saying. We are committing fraud and creating
9 massive liability. We don't win. Fraud is not okay. You've
10 got to stop rationalizing why fraud on our part is the bank's
11 fault. It's certainly not okay.

12 In the investigation and the prosecution of this
13 case, the investigative team and the prosecution team has
14 come up with four reasons why RDAG collapsed, and they are
15 all inextricably intertwined with the defendant.

16 First, he instituted a win-at-all-costs mentality.
17 Second, his metric for winning was material wealth. Third,
18 he knew and deliberately ignored the massive and glaring
19 warning signs that his company was committing massive fraud.
20 And, fourth, he promoted those who committed fraud and
21 bullied those who brought up any problems at Reagor-Dykes.

22 Let's talk about win at all costs.

23 **(CD clip resumed and transcribed as follows:)**

24 MR. REAGOR: "You gotta want -- you gotta want to
25 win more than you want to live. I do. I'll fucking die to

1 win. I want to win every fucking day, every fucking day,
2 every fucking deal."

3 (CD paused.)

4 MR. HAAG: The logical takeaway from his
5 instructions to his sales force is winning is the only thing.
6 It's more important than ethics. It's more important than
7 doing things the right way. It's more important than being
8 honest.

9 The metric for winning, material wealth.

10 (CD clip resumed and transcribed as follows:)

11 MR. REAGOR: "If you don't understand what I'm
12 talking about, fuck you. Change your fucking mind or get the
13 fuck out of my dealership.

14 "I'm not changing my mind because my fucking mind
15 is right, motherfucker. Show me your shit. Let's compare
16 net worth. Let's compare houses. Let's compare planes. I
17 got two of them, one jet, one twin prop. What do you got?
18 I'm building a fucking mansion right now on 19th Street.
19 Where do you live?

20 "You know why I live there? You know why I have
21 that? You know why I got my jet? 'Cause I'm a fucking bad
22 motherfucker, and I don't play around. I work my ass off."

23 (CD paused.)

24 MR. HAAG: If you were to ask most people, what
25 have you got, they would tell you: I've got my faith. I've

1 got my family. Myriad of other answers. Probably last, if
2 it even makes the list, would be wealth, what kind of house I
3 live in, what kind of car I drive, but for the defendant that
4 was all that mattered.

5 This Court has seen and read the Presentence
6 Reports for these three people. They were promoted to
7 high-level positions within the Reagor-Dykes Auto Group, and
8 they were all committing fraud on a massive scale.

9 We're going to look at a clip here about how the
10 defendant handled one of the managers in Plainview who didn't
11 do well on an audit.

12 **(CD clip resumed and transcribed as follows:)**

13 **MR. REAGOR:** "Get the fucking deals in the office
14 in Plainview. You guys fucked us on this audit. Get your
15 fucking head out of your ass, land, grow a pair, and manage
16 that fucking deal."

17 **(CD paused.)**

18 **MR. HAAG:** This Court has already discussed the
19 defendant's lack of remorse or contrition. As it's noted,
20 the defendant has blamed the jury; he's blamed Ford Motor
21 Credit Company; he's blamed the banks; he's blamed the
22 Government; he's blamed this Court. In fact, he's blamed the
23 entire American justice system.

24 Perhaps most egregiously, he's completely
25 transposed his position with those of his victims and claimed

1 that he's the victim in all of this.

2 (CD clip resumed and transcribed as follows:)

3 MR. REAGOR: "I think everybody should be treated
4 fairly and have a fair opportunity, and I don't think just
5 because you have a lot of money or you own a big company that
6 you should get any less justice in the courtroom than anybody
7 else. And I don't feel like I've gotten my share of justice
8 in the courtroom so far."

9 UNIDENTIFIED REPORTER: "Anything else?"

10 (CD concluded.)

11 MR. HAAG: And yet another example of this complete
12 transposition, the defendant is arguing that somehow, because
13 he's rich, he didn't get a fair share of justice in this
14 courtroom.

15 And that completely goes against what is the
16 typical critique of the American justice system, which is
17 capsulated from a Bryan Stevenson quote: "We have a system
18 of justice that treats you better if you're rich and guilty
19 than if you're poor and innocent."

20 And the defendant here certainly enjoyed several
21 advantages that most in the criminal justice system do not
22 enjoy. He's been on bond this entire time. He's had a legal
23 defense dream team. And, Mr. Markham, I apologize, you had
24 not come in at this point, but I'll add you to that list as
25 well. But he has had the best of the best in terms of

1 attorneys.

2 In looking at the bank records — and this is prior
3 to even hiring his main defense team — he has spent over
4 \$400,000 in hiring attorneys. It would be reasonable to
5 estimate in this case he likely spent well over \$1,000,000
6 hiring the best of the best to defend him in this case.

7 The United States is asking for justice in this
8 case. The justice that we are asking for is holding Bart
9 Reagor accountable for the culture of corruption and greed
10 that he instituted at the Reagor-Dykes Auto Group and all the
11 harm that flowed from it even if he won't hold himself
12 accountable.

13 We are asking for justice for IBC Bank. We're
14 asking for justice for the Reagor-Dykes Auto Group customers,
15 several of whom were stranded with cars that they had traded
16 in but were not paid off. We're asking for justice for the
17 Reagor-Dykes Auto Group employees who were subjected to
18 bullying on a daily basis and who lost their jobs.

19 We're also asking for justice for West Texas
20 values. One of the very special things about living out here
21 and practicing out here is that honesty and integrity are
22 part of the fabric of this area. In West Texas, when you
23 look another person in the eye and you shake their hand and
24 you tell them you're going to do something, that is your
25 bond; that is your word. You don't lie. You don't cheat,

1 and you don't steal.

2 The defendant and the way the defendant ran his
3 company was completely antithetical to all of those values.
4 Thank you, Your Honor.

5 **THE COURT:** Thank you, Counselor. The Court will
6 give that argument appropriate weight in adjudicating the
7 pending motions for variance and the final sentencing
8 decision.

9 Mr. Markham, you may proceed. And I'd just ask
10 that you also focus on the 3553(a) factors the Court is to
11 apply and keep in mind that there are pending motions for
12 variance.

13 **MR. MARKHAM:** Yes, Your Honor.

14 **THE COURT:** Please proceed.

15 **MR. MARKHAM:** I will focus on the presentation
16 we've just heard from the Government. It's new to me;
17 although, he did provide adequate time for me to look at
18 these.

19 I want to start with probably what is the most
20 awkward part for me as somebody from Boston. I'm not from
21 West Texas. I've been here for depositions before and for a
22 couple of cases.

23 I cannot tell this Court about the values of West
24 Texas, but I do know this: They are nationwide values.
25 Everybody adheres to those values. And among the most

1 important reasons why we have the great West Texas United
2 States, as well as the Massachusetts United States, is we are
3 allowed to speak our mind.

4 I would not have spoken the way Bart Reagor spoke.
5 Had I been his puppet master, he would have said things
6 differently. The same for Dan Cogdell; there's no question.
7 But he said what he said openly, and it is his belief.

8 The guidelines build in a component to reward
9 people who accept responsibility, and it's three points off.
10 And three points at the high end where Your Honor has placed
11 him with the guidelines that you've calculated means a whole
12 lot of time, so he's getting a whole lot of time not -- not
13 knocked off because he has spoken his mind in a way that
14 fairly obviously means he does not accept responsibility.

15 But I ask this Court to consider whether taking his
16 comments beyond that and into the realm of a general
17 disrespect for authority, as Mr. Haag sees it, goes too far
18 and is dangerous to one of our fundamental liberties.

19 They're fighting in Europe right now for one
20 country to protect the liberty to speak its way and not to
21 let a government over-impose its view.

22 Mr. Haag has done an incredible job with the
23 prosecution, a successful job. He -- my client stands to
24 lose at least a decade of his life. That seems to me to be
25 punishment enough, particularly weighing against adding on

1 more time or giving a variance at all because he spoke out
2 the way it's not politic to do. Not politic may cost an
3 election; it may cost a friend, but it shouldn't cost a day
4 of liberty unless it embodies criminal conduct, and for that,
5 he's already been punished.

6 With that having been said, Your Honor, I'd like to
7 go through the videos that Your Honor heard. I don't have to
8 have them replayed. I'll refer to them by a key word or so
9 in them, and I'm sure Your Honor will know what I'm talking
10 about.

11 The first tape, the first thing he says is, he
12 regrets what happened to his customers, and he has said that
13 many times. He regrets the loss of his business. He regrets
14 the loss to his family, and the shame, and he's paying a big
15 price.

16 And the assets that Mr. Haag says that they found
17 that he had, I don't know that they've been authenticated or
18 challenged. I accept the fact that Mr. Reagor had money. I
19 don't -- I don't think it's been proven that Mr. Reagor had
20 money that was available for him to infuse the money that was
21 needed to rectify the huge fraud that was perpetrated by his
22 underlings.

23 I just don't know that he had that money. I don't
24 think it's been shown. It certainly hasn't been shown in a
25 way that would meet a jury trial standard, and I don't even

1 think it's been shown by any evidence beyond a preponderance
2 of the evidence. I don't think it's been there.

3 Now, in the second tape, what I heard Mr. Reagor
4 say was that he did not want fabrication. This is not -- he
5 says, I don't want anybody to fabricate.

6 And then the Government says to you that what he
7 means by I don't want to fabricate, that you should
8 fabricate; that this is what the mob does.

9 Your Honor, this is not the *Godfather*. We deal
10 with evidence. And if Reagor gets up and yells and screams
— and I believe that's in the second tape — that I don't
12 want anybody to fabricate, I think he has to be taken at his
13 word unless there's some showing that he's winking or
14 nodding, rather than this being a Hollywood script.

15 I believe it was in the fourth tape where he
16 complains that an early audit may have -- may have saved us.
17 In other words, he was telling his staff, if Ford Motor
18 Company had only come in early, we would have been saved.

19 Well, that is literally true, Your Honor, because
20 if Ford Motor had found out earlier what Shane Smith was
21 doing, Ford Motor Company would have stopped it earlier by
22 not feeding more cars or doing whatever Ford Motor Company
23 with its massive capabilities to defend itself can do.

24 But the fact that he says, if they'd have come in
25 earlier, we might have a saved company means that some of

1 that 35,000,000 may not have been lost. That is not a
2 statement -- however inadvertently he may have said it with his
3 boisterousness and his bullying, that is not a statement
4 that's applauding the fraud. It's saying, if they'd have
5 come in earlier, it could have been accepted.

6 Now, it is true, that is, he blaming other people,
7 that's true. He doesn't get acceptance of responsibility.
8 In fact, he's about as far away from it as anybody I've ever
9 seen. That's clear, but that's really I respectfully submit
10 all the Court should consider that as meaning.

11 In another tape, he says: Those who did right,
12 thank you. Those who did wrong, get your head out of
13 whatever, or something like that. Again, at his word, that
14 means he was lambasting the people who did wrong.

15 And I have to say, Your Honor, that while we did
16 not object to the admission of the tapes, under even the
17 relaxed standard on preponderance of the evidence and the
18 more loose standard for sentencing, that doesn't mean we --
19 we agreed with all the gloss that the Government was putting
20 on it. Like saying, oh, well, this is -- when the godfather
21 does that, that means go out and kill somebody.

22 That's not what this could be taken to mean without
23 proof. He's sitting there yelling at people who didn't do
24 the audit right and thanking the people who did it right.

25 Now, in the e-mail where he's quoted as speaking

1 back to a banker about, I don't want any more red flags,
2 there are two ways to interpret that. One is, don't send me
3 any more; I'm not interested in seeing our failings, which is
4 an unreasonable thing to say to a bank. They're never going
5 to do it that way. They're going to send you if you're
6 overdrawn. That's been my experience when I was a college
7 kid that that's what they do.

8 All right. But it could also mean: I don't want
9 any more red flags. Darn it, I'm going to go to my company,
10 and I'm going to make sure that the books balance. And we do
11 remember that Shane Smith said during the trial under oath,
12 Shane Smith, the Government witness, that he was doctoring
13 the statements that he was sending over to Bart Reagor. He
14 said that, and that's in the record.

15 And that's the Government witness, and he was
16 sentenced to seven years for a very large fraud. And I don't
17 know because I wasn't there, Your Honor, but I have not heard
18 that the Government took any issue with the truthfulness of
19 his testimony at trial, at Mr. Reagor's trial.

20 There's a Plea Agreement between Shane Smith and
21 the Government saying he's got to tell the truth. His
22 principle telling of the truth or not was in this courtroom
23 against Mr. Reagor. I didn't hear anybody take any points
24 away from him because he was lying about the fake statements
25 or he was lying about not having told Mr. Reagor.

1 So the fact that this man says, I don't want any
2 more red flags, is probably more likely he wanted to fix it
3 so it never happened, but, in any event, the Government
4 hasn't proved that it has that sinister meaning that they
5 thought it had.

6 Next, Your Honor, is a tape where he says: Don't
7 have skeletons in your closet; I don't have skeletons in my
8 closet. I mean, that is interpretable equally with innocence
9 as with guilty, if not more so with innocence.

10 And I respectfully submit that the man's hyperbole
11 when he's in these meetings and he gets fired up and pretends
12 that he's the Texas Tech's football coach and he's yelling at
13 the sideline because they're down two touchdowns at the start
14 of the fourth quarter and that maybe is the way to inspire
15 people, that clearly was not what most people would want.

16 Although, I will tell you, I have some people who
17 are -- who wish to tell this Court that they were in those
18 meetings, and they were not troubled; they understood it was
19 Bart being the way Bart is, but, in any event, however
20 artful, this does not have the sinister view or the sinister
21 interpretation that the Government has glossed onto it.

22 In the Mesa [sic] fraud that -- the Mesa audit
23 where there was a \$450,000 shortfall, they're quoting -- the
24 quote that I heard was Mr. Reagor yelling at people and
25 saying, do things right; I don't want that again. That

1 simply isn't encouraging that kind of fraud. It's not a
2 statement that suggests that Mr. Reagor was endorsing those
3 kinds of bad actions. Do things right.

4 The quote that seems to me to be the most striking
5 is where Mr. Reagor says, I would rather die than lose. I
6 would rather die than lose, he says, at the top of his voice.
7 Just following that, the Government said that means I would
8 rather win -- I would rather win than do it right. That's
9 what he said. That's on this record. That is not what the
10 tape said. The tape was a hyperbole. I'd rather die than
11 win.

12 I respectfully submit we all know that's not true.
13 Mr. Reagor is here, and he's lost big. And if -- if dying
14 was better than losing, we would not have him here, but he's
15 here; he wants to fight on his appeal, which is his right.
16 He never said, I would rather win than do right. That's not
17 what he said.

18 I agree with Mr. Haag that bragging about riches,
19 it's certainly not something that we do up in New England,
20 and it's certainly not something that I would suspect the
21 good people of West Texas do. And some people would call it
22 obnoxious.

23 Mr. Reagor meant it as a way to inspire people. I
24 don't know what effect it had, but it is not within I sus --
25 I respectfully submit the fair range of what this Court

1 should take into consideration, which is the -- his entire
2 life and his actions, and what he said in sales meetings,
3 despite the hyperbole, simply cannot be, I respectfully
4 submit, interpreted the way the Government interprets it, as
5 being a shameless complete disrespect for everything good
6 about everything.

7 After all, he said it on a tape. If it was all
8 that bad, he's smart enough not to have said it on a tape.
9 This was the way he believed he could inspire people.
10 However wrong that was, it's cost him greatly. It's cost him
11 a lot of his liberty. It's cost him shame, disgrace, loss of
12 his family, his grandchildren for a long time, and I
13 respectfully submit that that is enough.

14 I think that's -- I know that's all the comments I
15 have on the -- on the Government's response to variance.

16 The only thing I would add that I have not point --
17 and I probably pointed it out in my papers. I just want to
18 emphasize it very briefly. There is a massive outpouring of
19 support for Mr. Reagor here in court. That tells a lot. If
20 he were the shameless bully, and that's all he was, and
21 people were putting up with him and smiling because he was
22 their boss, they would be long gone, but they're here.

23 **THE COURT:** Yes. And the Court -- and the Court
24 will note for the record the outpouring of support
25 represented in the gallery today; that it is nearly full.

1 Many of those persons are here to support the defendant.

2 And then also the Court will take judicial notice
3 of the 93 character statements that were filed with this
4 Court in a timely manner.

5 So, yes, I do believe that the record reflects at
6 least that community support.

7 **MR. MARKHAM:** Yes, Your Honor. Thank you. And I
8 would just say that just a brief analysis of that massive
9 showing in writing talks about virtually every aspect of his
10 life with multiple people coming in.

11 Pastors: He gave to the church. He was there on
12 Sunday. He coached the team. He helped a widow, widows. He
13 helped the widows.

14 Family members, workers, people who he's given a
15 second chance, who he's rehired over a course of thirty years
16 of life since he's been in a position to do this.

17 All of that says much more about a man than what he
18 says on hyperbolic tapes where he in a bad, misjudgment-like
19 way tries to inspire people.

20 And I ask the Court to consider that in its
21 entirety by people who volunteered to do this and to get this
22 in on time, and it says volumes.

23 I would only say this with respect to the variance
24 I seek of a downward departure, it's a lot of time. Whatever
25 the Court gives him is a lot of time. He will never be in a

1 position to do anything like this again. He'd be lucky to
2 get a credit card from any bank, much less do something like
3 this. The deterrence is there.

4 There was a recitation by the Government of the
5 400-and-some-odd months that the other people got for being
6 in these ranges. That sounds like a great deal, but I think
7 the highest sentence was Shane Smith's, and his loss was
8 25 -- was 35,000 [sic], which he fully admitted that he did,
9 and said that Bart wasn't involved with.

10 So in terms of proportionate sentences, certainly
11 within the guideline range, or even lower, accomplishes the
12 goal of having equal sentences, adequately punishes Mr.
13 Reagor so that at some point he can have a life, come home to
14 his family, and have something to live for. Thank you for
15 hearing me, Your Honor.

16 **THE COURT:** Okay. Thank you. The Court will give
17 appropriate weight to that argument in adjudicating the
18 pending motions for variance and then also the final
19 sentencing decision.

20 At this time, the Court will turn to statements,
21 final arguments, and allocution.

22 Mr. Markham, because of your unfamiliarity with
23 this Court, I'll let you know that I provide Defense Counsel
24 their preferred order of operation, allocution to be followed
25 by final argument or vice versa.

1 Do you have a preference on argument and
2 allocution?

3 **MR. MARKHAM:** I'd like to argue after allocution if
4 I may.

5 **THE COURT:** Okay. So we'll do it in that order.

6 We'll turn to statements, allocution, and then final
7 arguments.

8 Mr. Haag, did the Government comply with any and
9 all statutory obligations to identify and consult victims in
10 this case?

11 **MR. HAAG:** Yes, Your Honor, it --

12 **THE COURT:** Does the --

13 **MR. HAAG:** -- did.

14 **THE COURT:** -- Government intend to present any
15 victim impact statements at this time?

16 **MR. HAAG:** No, Your Honor.

17 **THE COURT:** Okay. Now, Mr. Markham, as already
18 noted by the Court and reflected in the sentencing file, this
19 defendant has received 93 character statements. Those are
20 all admitted as exhibits to the sentencing hearing. They
21 were all reviewed by this Court.

22 Do you intend to present any of these character
23 statements in the form of additional live testimony?

24 **MR. MARKHAM:** I do, Your Honor. It won't be a
25 repeat of those. It will be something that they've said, in

1 part what they've said, but they would like to address the
2 Court. There's some family members and some former employees
3 that would like to address the Court briefly.

4 I've told them that they should limit it to about
5 three minutes. The Court will get the point in that time. I
6 believe there's seven of them.

7 **THE COURT:** Okay. At this point, Mr. Markham, you
8 may call your first character statement.

9 **MR. MARKHAM:** I'd like to call — come on up —
10 Mr. --

11 **DR. BRION REAGOR:** Brion, Brion.

12 **MR. MARKHAM:** -- Brion Reagor, who is the brother
13 of Mr. Reagor. Would you --

14 **THE COURT:** Mr. Reagor --

15 **MR. MARKHAM:** Your Honor, would you like them to
16 come to the podium?

17 **THE COURT:** Yes. Mr. Reagor, you may approach the
18 center podium. And I'd just ask that you begin with a full
19 statement of your name, and then you may take as much time as
20 you need, and you may read aloud a prepared written
21 statement. Please approach.

22 And just, again, if you'll state your full name for
23 the record so the court reporter can record it.

24 **DR. BRION REAGOR:** My name is Dr. Brion Reagor.
25 B-R-I-O-N, W. Reagor. I'm just going to read a statement

1 that I wrote for my brother.

2 **THE COURT:** And, again, I know this can be an
3 intimidating process. You may take as much time as you need,
4 and you can just read aloud or do whatever you find most
5 comfortable.

6 **DR. BRION REAGOR:** Thank you. Dear Honorable
7 Matthew J. Kacsmaryk, I am Dr. Brion W. Reagor, the younger
8 brother to Bart Reagor, and I am grateful for the opportunity
9 to share with you a small glimpse of my brother's importance
10 to me, our family, and his community.

11 My brother and I were raised in North Dallas with a
12 very traditional value and a strong ethical conduct. Raised
13 within fifteen minutes to extended family, a successful
14 educated mentorship was never absent. My sister-in-law,
15 Annette, was raised about five minutes away from our home.

16 I have been friends with Annette since junior high
17 school. Her family raised her in similar fashion.
18 Therefore, collaboratively, my brother and sister-in-law have
19 raised their children with respect for themselves, their
20 family, and their community. We all were raised to do things
21 correctly the first time, and then one cannot develop a self
22 worth without having any integrity.

23 We all have used my brother as a sense of fuel,
24 inspiration, mentor, friend, and collaborator. My brother
25 has proven time and time again he will be present, that he

1 will show up, that he will improve the situation. Our
2 intimate and extended family, as well as our last set of
3 family friends, has benefited multiple times from Bart's
4 ability to assist.

5 I'm not writing solely about fiscal assistance.
6 I'm writing about the deeper human qualities which matter.
7 He can be depended upon. He can be approached. And he can
8 certainly network for someone effectively.

9 Our family requires doing the right thing. Trust
10 me, the irony of the last four years has not been lost on any
11 of us. My brother was actively making positive change in his
12 family in Lubbock, Texas and all of West Texas and on the
13 Texas Tech University campus.

14 Shamefully, all of his well-intended, contagious,
15 community-minded forward progressive action has been stifled
16 in an instant.

17 Mine and Bart's parents are a young tragedy. Our
18 parents were next-door neighbors in North Dallas while in
19 junior high school. This is where their love story began.
20 Sadly, at the age of 47 in the peak of his professorial
21 career, after 29 years of marriage to our mother, our father
22 suffered a debilitating brain hemorrhage. My devastated
23 mother, with her two boys, did everything we could to save
24 our dad.

25 Naively at the time, we were not thinking too well

1 on the long-term disability aspects of these heroics. This
2 long-term disability maintenance responsibility for our
3 father has fallen solely on Bart Reagor, Annette Reagor, and
4 Brion Reagor.

5 Our family crisis did not end with our father's
6 sudden dependency. We lost our mother ten years later.
7 After 39 years of marriage and after ten years of caring for
8 our father, our mother died by the exact same brain
9 hemorrhage defect our father had.

10 Bart and I still have our kind, appreciative dad.
11 The responsibility of his care is an astounding \$150,000 a
12 year non-tax deductible. The last four years has made this
13 incredibly difficult to manage, with legal fees, emptying of
14 bank accounts, as well as the mental anguish we've all
15 endured.

16 My brother, sister-in-law, and I over the last
17 20 years have successfully and collaboratively assisted four
18 generations of our family simultaneously. Mine and Bart's
19 dad was the sole child of our grandparents, with the mental,
20 financial, and emotional well-being to take care of his own
21 parents. With the sudden loss of his ability, the financial
22 care and safe placement of our aging grandparents became our
23 responsibility. The Reagor family was forced to skip a
24 generation in ability to provide. While raising their own
25 children to the success story which they had become, Bart and

1 Annette, with assistance from me, also provided for both my
2 grandparents and our parents on the Reagor side. I'm sure
3 you know the exorbitant costs financially and the emotional
4 toll for senior care in the United States.

5 We have also been present for assistance to young
6 cousins with university costs to help break former Reagor
7 cycles within our family siblings.

8 I hope this enlightens the Court to Bart Reagor's
9 importance to our family as a leader by example and a
10 confidant of trust and a provider of security.

11 Lubbock, Texas, and all of West Texas, as well as
12 Texas Tech University, have benefited by Bart's flourishing
13 business ownership. He has constantly given back to his
14 community. The entire revitalization of the once-forgotten
15 Lubbock downtown was started by Reagor-Dykes Auto Group.

16 Two well-known philanthropic organizations were
17 allowed to office in their RDAG building downtown rent free.
18 CASA and Make-a-Wish Foundation were located in the building
19 and were openly visited and supported by Bart daily.

20 The new Buddy Holly Hall -- the new Buddy Holly
21 Hall of Performing Arts in Lubbock was funded largely by Bart
22 and Annette Reagor.

23 The slogan, the Friendliest City in America, for
24 Lubbock was pitched by Bart Reagor. Bart annually donated to
25 all local elementary school, junior high school, and high

1 school sporting leagues.

2 He supported Christmas for Kids, United Way, the
3 East Side Concert, and was made Trumpeter Award Man of the
4 Year for his support of Lubbock hotels and motels.

5 Texas Tech University donations from Bart and
6 Annette Reagor seemed endless. He provided all university
7 vehicles, including an airplane. He dedicated time and
8 financials to the Diversity Group, Fellowship of Christian
9 Athletes, every athletic program, alumni association, and the
10 campus library.

11 These are a few mentions of his active enrollment
12 in the maintenance of the education and continued development
13 of his community.

14 I know intimately the toll of the last four years
15 has taken on my brother physically and emotionally.
16 Unfortunately, there is no one in our two small families, the
17 Reagors and the Rileys both, which has been excluded from the
18 anguish.

19 My brother is a strong example of not losing faith.
20 He has remained quiet, against his every natural fiber and
21 his core as advised. He was navigate -- he has navigated
22 great physical illness and challenges, both cancer and
23 Parkinson's disease, solely exacerbated by the stress of the
24 last four years with confidence and assuredness. I am and
25 will remain proud of Bart Reagor.

1 **THE COURT:** Thank you, Dr. Reagor. And I will
2 consider that alongside your letter, which was marked as
3 Page 067 in the written documents submitted as character
4 statements. You may return to the gallery and your family.

5 **DR. BRION REAGOR:** Okay.

6 **THE COURT:** And, Mr. Markham, you may call your
7 next character statement.

8 **MR. MARKHAM:** Annette.

9 **THE COURT:** Ms. Reagor, I'd just ask that you begin
10 with the statement of your full name, and then you may take
11 as much time as you need.

12 **MS. ANNETTE REAGOR:** My full name is Annette
13 Reagor.

14 Your Honor, my name is Annette Reagor. I'm Bart's
15 wife. I've known Bart since I was 14 years old. I've been
16 married to him for 34 years.

17 We have been blessed with three incredible children
18 that we have had the honor to raise together. We have an
19 amazing son-in-law and daughter-in-law and now we've been
20 blessed with two beautiful eight-month-old granddaughters.

21 Bart has always been a huge role model and positive
22 influence in raising our children. As our kids were growing
23 up, he always -- we always had a house full of kids that Bart
24 always made to feel welcome and at all times had a huge
25 impact on all of their lives as well. A lot of those kids

1 consider Bart a second father to them and still love him to
2 this day.

3 Bart has also taken care of his dad, who is
4 disabled, and his elderly grandparents with love, care, and
5 compassion, as well as many of his extended family. He's
6 always gone out of his way to help people in need and has
7 taught my kids this by leading by example countless times in
8 their lives. They are so lucky to have witnessed their
9 father being so generous to so many people.

10 Our family has been blessed with an incredibly
11 loyal and supportive husband and father. I have watched Bart
12 do everything in his life with faith, integrity, character,
13 honesty, and passion. He has always done the right thing and
14 insists that others do the same. He does not lie, cheat, or
15 steal, and he would never ask anyone else to.

16 He is the most generous person I know. He is the
17 strongest person I know. I love, trust, and respect him with
18 all of my heart.

19 It's been extremely hard to watch Bart lose so much
20 over the last three and a half years. He has lost his
21 business that he worked so hard to build. He's fought
22 cancer, and he's been diagnosed with Parkinson's disease.
23 But he somehow still keeps a positive attitude and most
24 importantly his faith.

25 Bart was diagnosed with Parkinson's in May of 2020.

1 I'm extremely concerned about his health and the negative
2 impact that a prison sentence would have on him. We have
3 been very fortunate to find a neurologist that, not only has
4 taken great care of him medically, but also truly cares about
5 him as a person.

6 Parkinson's disease impact Bart's life on a daily
7 basis physically, mentally, and emotionally. There are many
8 things we have to do to manage his Parkinson's, including
9 monitoring his diet, the times that he eats, managing the
10 side effects of the medications, which include extreme
11 nausea, managing his sleep, and also exercising on a daily
12 basis. I believe that any time in prison would be
13 detrimental to Bart's health.

14 Bart has been my husband, my best friend, and my
15 rock my entire adult life. Our family needs him (crying)
16 with us, and I want our granddaughters to know him and grow
17 up with him in their lives. I truly believe that it's a huge
18 injustice for Bart to spend even one day away from his
19 family. Thank you.

20 **THE COURT:** Thank you, Mrs. Reagor. You may return
21 to the gallery.

22 Mr. Markham, you may call your next character
23 statement.

24 **(Pause.)**

25 **THE COURT:** You may approach the center podium.

1 Just begin with the full statement of your name for record
2 purposes, and you may take as much time as you need.

3 MS. RACHEL ESLICKER: Okay. Rachel Eslicker.

4 Sorry. (Chokes up.) Make me go right after my mom.

5 Good morning, Your Honor. I would like to speak on
6 behalf of Bart Reagor. Thank you for hearing from me.

7 I am Bart's daughter, Rachel. I'm his oldest child
8 and a relatively new mother to his first grandchild.

9 It seems that others are trying to portray my
10 father as a cruel person and a bully who is driven by greed.
11 It is very clear to me that these people do not know my
12 father. In fact, they've likely never spoken to or
13 interacted with him personally.

14 I can confidently say that the picture they're
15 painting is irreconcilable to the man I've known my entire
16 life.

17 The best way to sum up my dad's character is
18 through one statement. Bart is a man who cares about people,
19 namely, his family, his former employees, and his community.
20 He is not someone who delights in tearing others down but who
21 lives for building them up.

22 There are countless examples. I'll start with the
23 personal ones.

24 I was a very shy little girl. My dad worked
25 six days a week, and Sundays were his only days off. One

1 weekend when I was three or four years old, my mom was having
2 a garage sale, so to entertain me, my dad walked with me up
3 and down the block and pointed out houses with Sunday papers
4 sitting in the street. As we approached each of these
5 houses, he mentioned that the family who lived there would
6 probably be very thankful if I would knock on their door and
7 hand them their paper.

8 Delivering papers became our little Sunday morning
9 tradition, something special that was just for me and my dad
10 when he could have been sleeping in or resting after a
11 70-hour work week. This ritual helped build my confidence in
12 approaching and speaking to others.

13 That deliberate encouragement carried into my adult
14 life. When I was twenty-two, I moved to the East Coast where
15 I had no support network to attend law school. I really
16 struggled with the stress. By Thanksgiving, I had lost
17 twenty pounds, was barely sleeping, and when I did manage to
18 sleep, I woke up after a few hours in a sweat with my heart
19 pounding.

20 Unsurprisingly, my first final did not go well. I
21 absolutely tanked. I went home and called my mom crying,
22 which, of course, meant my dad also heard how upset I was.
23 Five hours later, my parents were walking through my
24 apartment door all the way from Lubbock. I took two days off
25 from studying while my parents built me up and made me laugh.

1 I got a 4.1 on my next final.

2 My dad also cared about his former employees. I
3 understand that the audio you've heard did not paint a
4 flattering picture. However misguided some of these
5 motivating performances were, they do not reflect who my dad
6 is as a man or as a boss.

7 I used to say that he spent the rest of his day
8 making up for those thirty-minute morning meetings. If he
9 spoke at a dealership, he spent his time before and after the
10 meeting encouraging and checking in with employees. He knew
11 what was going on in every back-office worker's life because
12 he walked their floor every afternoon and asked each one of
13 them about it.

14 When my dad had to fire one particular employee, he
15 was still brainstorming months later how he could hire him to
16 do something else at the company, such as work at the gym,
17 because he couldn't stop worrying about him and his family.

18 My dad gave people countless chances and constantly
19 rehired employees who he fired for good cause simply
20 'cause -- simply because they asked him to and promised to do
21 better.

22 Finally, my dad cared deeply about the West Texas
23 community. He raised money for countless deserving nonprofit
24 organizations, like Make-a-Wish, the American Heart
25 Association Go Red for Women event, CASA, the Walk for

1 Diabetes, and numerous others. What's more, he was endlessly
2 generous with his time and was fantastic at inspiring others
3 to give what they could, whether that was time or money.

4 My dad was extremely passionate about helping
5 Lubbock to grow and evolve. He was a huge advocate and
6 sponsor for revitalizing downtown, not just through
7 investment and real estate, but through promotion of the
8 culture there. He recreated the historic Christmas windows
9 for the first time in decades and sponsored a new outdoor
10 plaza stage for the LHUCA, a center for the arts.

11 All of his community involvement sounds really
12 impressive, but what truly showed my dad's character were the
13 small acts of kindness I continually witnessed over the
14 years. Small things like running after a man who looked
15 hungry to give him his leftovers after a meal, inviting a
16 shelter to bring their residents to the headquarter's coffee
17 shop for coffee on him. Bart's activism in the community was
18 not limited to the times that people were watching.

19 Your Honor, I respectfully request that you bear
20 Bart's many acts of kindness and compassion in mind when you
21 decide his sentence. My dad is a resilient man, but losing
22 his presence will be an unbearable blow to our family. We
23 all worry, as any family would, but with the added fears
24 associated with the progression of his Parkinson's disease
25 and how sick he becomes when he takes his medicine, a place

1 without proper care is unthinkably devastating.

2 Thank you for your consideration.

3 That was the end of what I wrote. I did just want
4 to address what we saw up there. I didn't have the benefit
5 of reading the full e-mail that my dad sent about power
6 booking.

7 I can tell you I very clearly remember from memory
8 in meetings him presenting that situation as a warning to his
9 employees, that bankers would try to do that to get people
10 approved, and he was trying to tell them not to do that. And
11 that, you know, I mean, an inexperienced salesperson might be
12 confused by when a banker is on the other line telling them,
13 are you sure that car doesn't have a DVD player and X sound
14 system, and explaining what power booking was, and that that
15 was not okay. That is what I remember from meetings.

16 I also know that there was a situation where it got
17 bigger, and we lost a lender because of it, and I think -- my
18 interpretation of that e-mail is that I thought maybe Bart
19 was going too far in defending his employees, but I --
20 genuinely, I would never want to misrepresent anything to
21 this Court.

22 I haven't seen that whole e-mail. They just showed
23 a snip, but I genuinely never remember him telling anybody
24 that power booking was okay. I remember the opposite.

25 THE COURT: Okay. Thank you, Ms. Eslicker. I will

1 add to your live testimony the character statement submitted
2 in Pages 25 and 26 of Defendant's group of character
3 statements.

4 Is there anything else you would tell the Court at
5 this time?

6 **MS. RACHEL ESLICKER:** That's it. Thank you, Your
7 Honor.

8 **THE COURT:** And you may return to the gallery. Mr.
9 Markham, you may proceed with your next character statement.

10 **MR. MARKHAM:** We have two brothers who I think are
11 going to come up for very short statements. Could they come
12 up together, Your Honor? Would you --

13 **THE COURT:** I tend to do them in sequence, but if
14 one is going to speak for both, I'll allow them both to stand
15 there.

16 **MR. MARKHAM:** No, they'll both speak very shortly.
17 Ryan. And then, Riley, you're on deck.

18 **MR. RYAN REAGOR:** Your Honor, my name is Ryan Wade
19 Reagor, and I'm Bart and Annette Reagor's middle child.

20 Does it need to be really brief, because mine -- I
21 think I might be a little confused, because mine is not
22 really brief.

23 **THE COURT:** Okay. You can -- why don't you go
24 first, Mr. Reagor, and then you can take as much time or as
25 little time as you need. I understand that the one -- the

1 next character statement may fill in some of the gaps.

2 **MR. RYAN REAGOR:** Absolutely. Would you like me to
3 read my statement that I prepared first, or I, kind of like
4 my sister, have personal experience of a couple things that
5 were shown on --

6 **THE COURT:** Why don't you do both. If you took the
7 time to prepare a written statement and you want that made
8 part of the record, do that, and then you can follow with
9 any --

10 **MR. RYAN REAGOR:** Yes, sir.

11 **THE COURT:** -- verbal response to what was
12 presented.

13 **MR. RYAN REAGOR:** Okay. I would like to first
14 express my thankfulness for the opportunity for me to come up
15 here today and tell the truth about who my dad is to me and
16 countless others.

17 Also, I'd like to thank everyone that is here today
18 to show your support for my dad and our family. That means
19 the world to us. And I would describe everyone over here as
20 West Texans, so, um, just one quick thing from what Mr. Haag
21 said.

22 I have the best parents and the best dad. There
23 are tons of ways to describe how he was as a dad to me, but
24 the biggest one for me is that he believes in -- in me even
25 more than I believed in myself at every turn of my life. He

1 is my biggest fan, but he is so much more than that.

2 Growing up, my friends loved to be at my house. We
3 had so much fun. My parents made sure of it. My parents
4 care about making sure that those that they are responsible
5 for have fun and anything that they ever need. There's
6 absolutely no doubt of that. I have the personal experience
7 of 29 years.

8 You know, just one quick example is just -- just
9 not very long ago at all, I saw some friends I hadn't seen in
10 awhile, and they asked me if I ever still went -- if my dad
11 ever still did car dancing and just because that's just --
12 what that was is, like, if we were ever coming back or, like,
13 getting onto our cul-de-sac, we'd turn the music up loud, and
14 he would just hit the brakes to the beat of the song, and
15 everybody just thought it was the funnest thing, and all my
16 friends still remember it.

17 Um, my dad worked at least 70 to 80 hours a week
18 when I was growing up, sometimes a lot more than that.

19 Sometimes he would have to show up to family vacations a
20 couple of days late after my mom, my sister, and my brother
21 had already got there. I think that's a great example to
22 show that he's a man of the highest work ethic.

23 That work ethic was instilled in me from seeing
24 that and having that as my example. That trait has helped me
25 in my life infinitely, and I'm very grateful to both of my

1 parents for that.

2 Even with as much time as he spent working, my dad
3 still coached me in just about every single game that I
4 played, in soccer, football, and baseball, from the time that
5 I was four years old playing soccer, and I didn't want to
6 play, and so he'd motivate me with a Power Ranger for each
7 goal that I scored, until the time I was fifteen winning a
8 National Championship in baseball with a torn ligament in my
9 thumb and a massive blister on my push-off foot from the
10 mound that he doctored personally for me before every game.
11 You know, if you have Bart Reagor in your corner, you will
12 believe that you can do it no matter what the circumstances
13 are.

14 My dad is the best, and he was there for me, and he
15 was work -- he was there for me at all times, and he was
16 working himself to the max day in/day out. Those two things
17 never changed. I can tell this Court it is a fact that I'm
18 very lucky to have the dad that I do.

19 Everyone who has ever coached on one of those teams
20 of my brother and I's growing up, or on the Lady Raiders'
21 soccer team of my sister's, loves my dad. A lot of those
22 people are here today. He was no doubt about it the best
23 coach that I've ever had, and I've had a lot.

24 He's had -- he -- the reason primarily, Your Honor,
25 that I would like to say that he is the best coach I've ever

1 had is because he knows what positive motivation is versus
2 negative motivation. You know, I've had -- I've had times in
3 my life that I've had coaches make me completely doubt
4 myself, but my dad knows -- my dad primarily -- I understand
5 there's parts of it, but 99 percent of what he told me in my
6 whole entire life was positive, was positive. He positively
7 motivated me, you know.

8 And that's -- that's all kinds of different things,
9 but, like, we had a thing on all of my different teams that
10 he coached where he wanted us to go to the championship, so
11 we'd have a chant. He'd say: Where we going? We'd say:
12 All the way. And he'd say: How are we going to get there?
13 And on the Raiders, which was a football team, he said on a
14 trolley. He said: I'll get y'all a trolley. We'll go to
15 the game on a trolley. On the 76ers basketball team, he said
16 in a limo.

17 Every single time he came through with what he said
18 and how we were going to go there. That was positive
19 motivation.

20 On the Bombers in baseball, he said: We're going
21 to bat around this inning for triple scruples -- for triple
22 scoops or cheeseburgers. I'll buy them for you guys after
23 the game.

24 You know, he made things fun. He's a positive
25 motivator. There's no doubt about it, no doubt about it.

1 As I got older, I learned that my dad had that same
2 adoration that I had for him as a son and a coach by so many
3 people that worked for him as well. I know that as a fact to
4 this Court because I was there, and I witnessed it, and I've
5 been told personally by the people countless times. And I
6 know it from my own experience because he made me feel the
7 same way about him as a boss, as a -- as a dad, a coach, and
8 a mentor.

9 Before my senior year of college in 2014, I would
10 not have thought that I was going to be in the car business,
11 but my dad told me that they were going to be starting an
12 e-commerce department and wanted me to come intern that
13 summer selling some cars online.

14 After about five days of not selling a car and
15 having a meeting where my brother was reporting more car
16 deals than I was and -- my little brother, and I was just
17 sitting there, I was like, man, I'm not very good at this,
18 but, you know, he taught me not to quit. So I walked over to
19 my dad's office, which was the best thing I could think of,
20 and at that time it was just right across the street. And I
21 said: Dad, I need some help. Here are the deals that I'm
22 working on. He said: Sure. What are their names and
23 numbers? He proceeded to call every single one of them
24 himself, and by the end of that day, I had sold three cars.

25 I can tell Your Honor that I have seen some very

1 talented people in this business, but I've never seen someone
2 do it the way that my dad did it. It wasn't complicated; it
3 wasn't tricky; it wasn't a power struggle. It was honest and
4 heartfelt making sure that that customer knew that he was
5 someone they could trust and be proud to give their business
6 to.

7 When my dad went in the car business, he had
8 massive suc -- massive success. He was the Michael Jordan of
9 the car business. I know because I was there, and I
10 witnessed it.

11 I cannot imagine someone better because he is
12 completely authentic about wanting the customer to have a
13 great experience, and I think everyone in this court knows
14 how hard that is to find in service, especially when it is
15 marketed to all, not just an elite bunch. He is the best.
16 Plus, if you're going to buy a car from him, you're going to
17 have fun doing it.

18 An example of how he was at the Reagor-Dykes Auto
19 Group that sticks out to me from that same day where he
20 called my customers and I sold my first three cars is, one of
21 the customers I'd been working on the longest came in for a
22 test drive, and he was going to leave without making a deal.
23 My dad walked up in perfect timing as he was leaving, and
24 said: Sir, I just want you to know that we want to make sure
25 that you are happy, and that you have the best experience

1 buying a truck from us.

2 We worked well past hours that night and found our
3 customer's dream truck. That customer was so happy that I
4 sold a vehicle to his wife and his daughter before my
5 internship summer was over. That story is who my dad was to
6 the Reagor-Dykes Auto Group.

7 Throughout my internship, I saw that my dad was
8 looked at by so many of the RDAG's as a -- RDAG employees as
9 a hero, a mentor, and a second dad type and still is to this
10 day.

11 I was so excited after my internship that I decided
12 to take all of my remaining full year of hours in one
13 semester, so I could come join the Reagor-Dykes Auto Group
14 full-time after the Christmas break with my degree.

15 All my friends who were a part of that internship
16 decided to join the Reagor-Dykes Auto Group full-time as soon
17 as they could as well. I ended up having multiple other
18 friends come to join the auto group later, all because of
19 their love and trust for my dad and my family.

20 And I did want to include some quotes from those --
21 from those people just briefly. They wrote letters, but they
22 wanted to say something in here too.

23 This is from Chas Quisenberry. Bart Reagor has
24 been like a second dad to me since I was eight years old.
25 Growing up, Bart's giving and serving nature was something I

1 looked up to. After college, Bart gave me the opportunity to
2 work for him.

3 Under his guidance and teachings, I learned the
4 following: Every day improve on at least one skill. Always
5 try to be as professional as possible. Treat everyone you
6 meet with utmost respect. Always show God in your day-to-day
7 work. Bart has been a major influence on me and so many
8 other lives, and he is truly a great man. I'll continue to
9 use the lessons I've learned from Bart for the rest of my
10 life.

11 From Turner Madison (phonetic): Bart is like a
12 second dad to me. He is always looking out for others. He
13 has never overlooked anyone thinking he's better than them.
14 I'm so blessed to have Bart and his family in my life. I
15 love Mr. Reagor.

16 From Philip Armendariz: I love your family. I see
17 your family as my own. A lot of that has to do with your
18 dad. Ever since we were kids, he made sure that we all knew
19 he'd do anything for us, like we were all his own. His heart
20 and his passion for others has always been noticeable, and
21 that's why everyone loved getting to hang out at the Reagors.
22 I'm so blessed and thankful to be able to call you guys my
23 family.

24 And then a story from Doug Anderson. You know, at
25 one point -- I won't go into details, but at one point, Doug

1 is one of my best friends, and he was not at the best point
2 in his life, and I told -- I was able to call my dad and tell
3 him, say -- and my dad replied simply by saying, have him
4 come see me.

5 And the story that my dad tells is that Doug pulled
6 onto the lot, and you can see the metal in his tires. And so
7 the first thing that they did was, they took Doug's truck
8 over to the service department and bought four new tires for
9 him, and had them put on while they went and met.

10 And in that meeting, he offered Doug a job. And in
11 that job -- from that job, turned into a job in management
12 and turned into him marrying his wife and turned into them
13 having their first kid and then now having their second kid,
14 and now the current career that he's in, even though the
15 Reagor-Dykes Auto Group is gone, things that he learned at
16 the Reagor-Dykes Auto Group and from my dad now has him as a
17 general sales manager of two stores.

18 So there is no doubt about it that there are tons
19 and tons and tons of examples that --

20 **THE COURT:** Mr. Reagor --

21 **MR. RYAN REAGOR:** -- I could give you.

22 **THE COURT:** And, Mr. Reagor, I do want you to
23 appreciate that the 93 character statements on file reflect
24 many --

25 **MR. RYAN REAGOR:** That was my last one.

1 THE COURT: -- stories like that.

2 MR. RYAN REAGOR: That was my last one of that.

3 THE COURT: Okay. I am familiar with the many acts
4 of spontaneous generosity and compassion that are reflected
5 in those character statements.

6 MR. RYAN REAGOR: Yes, sir.

7 THE COURT: And, as a former AUSA and a current
8 Article III judge, I know that no defendant is defined solely
9 by whatever deeds are reflected in an indictment or a
10 conviction. I know many of us are a mix of things, and all
11 of those acts of generosity and compassion are reflected in
12 those character statements and in your testimony today, and
13 the Court will give it appropriate weight.

14 MR. RYAN REAGOR: Yes, sir. I just have a little
15 bit left, but I'm done with the -- with the stories of --

16 THE COURT: Okay. Please proceed.

17 MR. RYAN REAGOR: -- with the stories of that,
18 so --

19 As you can see, Your Honor, my dad was looked at as
20 a dad, a coach, and a mentor by so many, including those that
21 worked for him.

22 I know that we are trying to see -- we were looking
23 at clips, and that kind of addresses what you just said, so
24 I'm just going to take what you said right there, and just
25 say that I agree with what you said.

1 But one more example that I can give this Court
2 about what the people who worked for my dad thought of his
3 meetings and if they were a positive thing or not was my most
4 recent job. I work for the Premiere Automotive Group in
5 their Texas platform, which is pretty much exclusively
6 ex-Reagor-Dykes' employees, and I can tell you the exact
7 morning, the exact schedule, the exact time, the exact core
8 of the messages, we do it the exact same way. And it just
9 wouldn't make any sense for something that we felt like we
10 were all just getting bullied and hated for us to go create
11 the exact same thing, so I did want to tell you that as well.

12 And, finally, my dad does not deserve to be treated
13 as a criminal. He's a hero. He's someone you want in your
14 life in all of his many roles. He's someone who believes in
15 you and is always both willing and capable to help.

16 He is so important to people as a grandson, a son,
17 a brother, a husband, a dad, a granddad now, or Pops, a
18 friend, an in-law, a cousin, a nephew, every role that he's
19 served people in, as a donor. You know, I'd be honestly --
20 I'd honestly be interested to see if I was able to get the
21 information to put together, but I would -- from my own
22 experience, I would guess that he gave away probably more
23 than he kept for himself.

24 He had a great vision for our community and our
25 downtown. He's a great leader, boss, and mentor, a great

1 fundraiser, but most importantly probably a great caretaker
2 of the forgotten. And I want to tell one brief story there.

3 A man named Bobby whenever I was home -- whenever I
4 was a student in college in Abilene, I was going by the same
5 Subway a lot, and I kind of noticed the same couple sitting
6 there, obviously homeless. And so one day, I walked up and
7 offered to buy them a sandwich and have lunch with them, and
8 they kind of told me their story. And Bobby had been -- he's
9 a carpenter, and he had very, very serious vision problems,
10 and he had not been able to find work from it.

11 And so the only thing I could think to do was to
12 call my dad, and so I did. And I called my dad, and he said:
13 All right. Hey, put it on the -- put it on the family card.
14 Get them a hotel for a few days. I'll make some arrangements
15 here, and then I'll have you put them on a bus down to
16 Lubbock. And I said, okay.

17 And so what I realized what those arrangements
18 were, was a job for Bobby, a house that had him -- a house
19 for him and his wife Sandy, a truck for him to drive, and
20 most importantly in his role to Bobby a friend to a man who
21 really, really needed one.

22 Bobby improved in circ -- his circumstances so much
23 due to my dad's help that his son ended up being able to come
24 and live with them, from homeless to having his son back.

25 Even though my dad is not in the position to pay

1 for Bobby's house or his truck anymore, he can still call my
2 dad if he really needs anything, or a friend to talk to, and
3 my dad still answers, which is something that I cannot say
4 about myself, you know. He's -- that's the kind of person he
5 is.

6 Finally, I want to talk about my dad's living with
7 Parkinson's for which there's no cure, and I just wanted to
8 include a brief quote from the Brian Grant Foundation for
9 your consideration. People with Parkinson's may experience
10 physical, mental, and emotional issues that impact lifestyle,
11 and lifestyle -- lifestyle also has a big impact on your
12 physical, mental, and emotional health. Adopting healthy
13 behaviors can support your overall health to help -- to help
14 you continue living a fulfilling life.

15 A healthy lifestyle may include staying active;
16 eating a healthy diet; developing and maintaining
17 relationships; participating in hobbies; managing employment
18 and finances; engaging in self care to reduce stress and
19 improve mood; getting enough sleep; living a mindful,
20 purposeful, and fulfilling life; and feeling good about
21 yourself.

22 As you can see from those suggested treatments from
23 the Brian Grant Foundation, time in prison will not be what
24 is best for my dad's health, and there is nothing that I
25 heard from the prosecutor's case that would come anywhere

1 near convincing me that he does not deserve to have his
2 health valued and placed as the highest priority.

3 I'm so proud to be my dad's son. I would ask that
4 you treat him with the most positive way that you're allowed,
5 Your Honor. He will not make you regret that. He will make
6 you proud that you did that, and he deserves it.

7 **THE COURT:** Thank you, Mr. Reagor. You --

8 **MR. RYAN REAGOR:** Yes, sir.

9 **THE COURT:** -- may return to the gallery. And I do
10 want Defense Counsel and those who have submitted character
11 statements to understand that recommendations for continued
12 medical care are part of the sentencing process, and at least
13 in this court, I give wide latitude to Defense Counsel to
14 make very particularized requested recommendations on
15 pharmaceutical interventions, diagnostic review. You can
16 request possible placement in a federal medical center.

17 I know, Mr. Markham, this is the first time in my
18 court, but I don't give short shrift to those requests, and
19 so there will be a time where we will go through your
20 requested recommendations on medical care, residence,
21 facility, things like that. So that will come later in the
22 hearing, and I do give wide latitude for that.

23 Now, Mr. Markham, you may call your next character
24 statement.

25 **MR. MARKHAM:** Katrina.

1 THE COURT: And, ma'am, I'll just remind you to
2 state your full name for the record, and then you may take as
3 much time as you need.

4 MS. SMITH: Your Honor, my name is Katrina Smith.
5 It's been an honor knowing you, Bart, or been knowing you.

6 Bart, you have taught me so much more than the
7 business, and these last — oh, God — three lessons that I
8 have never -- I will never forget: Have faith in God, take
9 good care of my family, and give back to others.

10 I can't stress how much of an impact that you've
11 made to our community. Just to name a few: CASA, the United
12 Way, Child Protective Services, the Youth Scholarship Fund.

13 I admire your -- I admire your leadership and
14 friendship that you have blessed me with and so many others.
15 You have been a great teacher and a mentor. I've always
16 believed you have an extra gift from God.

17 You have always encouraged me to do the right
18 thing, never lie, never cheat, never steal. I've always --
19 you have always been my go-to person, never gave me a
20 negative response, not one time, and you never gave up on me.

21 Your energy and passion inspired me to do -- your
22 energy and passion inspired me to never be outworked and to
23 be your number-one salesperson. I don't know another man
24 that works harder than you do to help others be successful.
25 Thank you for always giving the extra encouragement I needed.

1 Your Honor, it's my hope today that you would set
2 Mr. Reagor free and send him home. Not to mention --

3 (Pause.)

4 THE COURT: Okay.

5 MS. SMITH: -- I know it must be a burden to hold
6 his -- this man's -- hold this man's fate in your hands.

7 The version of Bart Reagor that -- who was
8 portrayed to me by the prosecutors in this trial is not
9 yet -- he's not the -- that's not the true Bart. The true
10 Bart that I know -- I know all about the truth of Bart.
11 Let's roll, hurricane.

12 THE COURT: Thank you. And I believe that was the
13 fifth character statement by live testimony. Mr. Markham,
14 you have two more, I believe?

15 MR. MARKHAM: Yes.

16 THE COURT: Okay. You may call your next character
17 statement.

18 And the Court does anticipate recessing after
19 character statements for a brief break.

20 (Pause.)

21 THE COURT: And you may approach and use the
22 microphone at the center podium. I'd just ask that you state
23 your full name for the record, and then you may take as much
24 time as you need.

25 MR. RILEY: My name is Daniel Joseph Riley. I am

1 Bart Reagor's father-in-law. Annette is my daughter.

2 I'm a retired senior partner with Baker Botts, and
3 I have known Bart --

4 THE COURT: I am -- I am familiar with the firm.

5 MR. RILEY: Hopefully everyone is.

6 THE COURT: You know, I believe we worked in
7 different offices. I was in the Dallas office.

8 MR. RILEY: I was in the Dallas office briefly.

9 THE COURT: Okay.

10 MR. RILEY: Then moved to the Washington office.

11 THE COURT: Okay. All right. Then you know Jamie
12 Baker.

13 MR. RILEY: Very well.

14 THE COURT: Okay. All right. We have -- we have
15 some friends in common, so, anyway, I hope that eases the
16 tension of the moment, and you may take as much time as you
17 need.

18 MR. RILEY: I want to say that I've known Bart for
19 an awful lot of years. His -- he and my daughter dated
20 during high school and college, and I knew their parents,
21 Bart's parents well. We socialized together. We were
22 skiers. So I've known Bart for a long time, known his dad.

23 I think Bart -- Bart's attributes come from his
24 dad. His dad is very, very high character, would not do
25 anything dishonest, and is very open about conveying that to

1 those around him. And I think Bart has learned from that,
2 learned heavily.

3 I've known his attributes that he's passed on to
4 his kids very well. He has raised a great family with the
5 help of my daughter. They are as high character as he is.

6 His daughter related to you his experience -- her
7 experience with her discouragement in beginning to law
8 school, and I think that's a good example of what Bart -- the
9 effect Bart has on people.

10 I think everyone who has dealt with him has respect
11 for -- contrary to what you've heard in these proceedings,
12 has respect for how he treats people and how honestly he
13 treats people. As long as I've known him, I would endorse
14 Bart's character to the ultimate degree, and I say that with
15 a great deal of experience in seeing both types of
16 characters. Thank you, Your Honor.

17 THE COURT: Thank you, Mr. Riley. And I will add
18 that to the written character statement you submitted in
19 Page 073 of Defendant's character statements.

20 At this time, Mr. Markham, you may call your last
21 character statement.

22 MR. MARKHAM: Yes.

23 (Pause.)

24 THE COURT: And a reminder to state your full name
25 for the record, and then you may take as much time as you

1 need.

2 MR. RILEY REAGOR: Riley Reagor.

3 THE COURT: Please proceed.

4 MR. RILEY REAGOR: Your Honor, my name is Riley
5 Reagor, the youngest of Bart and Annette Reagor's kids. I
6 appreciate the time to speak.

7 My dad has always been the person I look up to most
8 for many reasons. He's a man of the highest integrity and
9 puts others before himself. I can tell you countless stories
10 to back that up; so can many others.

11 My dad has always helped people even when he wasn't
12 always in the position to help. If he sees someone
13 struggling more than him, he does what he can to help that
14 person.

15 My dad's my hero. From the time I remember, I've
16 always wanted to be just like him, and still do. There's
17 never been an obstacle that's too big for Bart
18 Reegor (phonetic) -- Bart Reagor, and not even this one.

19 My dad has always made everything fun and people
20 around him have fun. My parents loved hosting mine and my
21 siblings' friends growing up. I had a close group of about
22 eight friends that would stay the night every Saturday night,
23 and my dad would take us to drive around and for midnight
24 snacks any time we wanted. He would beat us all in ping pong
25 and was basically a part of our friend group.

1 He coached our baseball team, The Storm, in middle
2 school, and all my friends -- all of my friends loved riding
3 to the games with my dad. He would blare rock music and get
4 us into the right mindset to beat whoever we were playing.
5 Losing wasn't a common thing on that team, but when we did,
6 he always had the right words to say -- always had the right
7 words to say to get us to bounce back and be ready to fix
8 things that needed to be fixed.

9 He was a great dad and a great leader and a huge
10 part of me and some of my closest friends. My dad is the
11 most courageous person I know. He is a fearless leader and
12 will outwork anyone.

13 The proof to this is him coming to Lubbock to walk
14 on to the Texas Tech football team. He was an undersized
15 defensive back that was at the bottom of the depth chart at
16 his first practice. He went on to be one of the four
17 walk-ons to make the varsity as a freshman and earned a
18 scholarship.

19 His senior year he won the Dell Morgan Award. This
20 award was presented to the player displaying the most courage
21 on the team. This award was decided by the players on the
22 team voting for that player each year. I think that's a true
23 testament to my dad's character. He was also -- he also
24 became the first to graduate from his side of the family from
25 college.

1 That sit -- this situation has been a true test of
2 my dad's character. Not only was his company taken from him,
3 but he was also diagnosed with Parkinson's and cancer. When
4 all of this stuff happens, I'd say the common response for
5 someone is to get negative and feel sorry for themselves. My
6 dad has done the exact opposite. His faith has grown
7 stronger, and he fought every step of the way with a positive
8 outlook.

9 I know my dad, and I know that if he had truly done
10 these things, he would have owned up to it. My dad's not a
11 liar, and he's not a thief, and he's not a cheater. Those
12 are the three principles that he instilled in us growing up
13 and to his team at work.

14 The Government has pulled the negatives out of the
15 morning meetings, but I can assure you they aren't showing
16 you the 99.9 percent of positivity that were in those
17 meetings.

18 We had a meeting every single morning, and the
19 things he taught us are who Bart Reagor is. Never
20 misrepresent anything to any bank; never sacrifice your
21 integrity to make money; always treat your clients with
22 respect and honesty; do everything right; have PMA, which
23 meant a positive mental attitude; no excuses, which meant
24 don't let yourself off the hook and hold yourself
25 accountable; rock and roll, which meant always bringing high

1 energy, and being someone that people wanted to be around.

2 My dad trusted someone that had too much control in
3 his company. Shane earned that trust with his hard work
4 ethic and what my dad thought was to be loyalty.

5 When I was around eight or nine years old playing
6 little league, there was always a man dressed in a full
7 baseball uniform walking around the ballpark asking everyone
8 for money. Sure -- sure enough, he walked up to my dad, and
9 my dad treated him just like he'd treat one of his best
10 friends. He'd take him to the concession stand, got him
11 whatever he wanted, and gave him twenty bucks for later.
12 Every -- every time we went to the ballpark, my dad did the
13 same thing over and over. Most people would probably do it
14 one time or a few times, but not my dad.

15 Eventually that turned into him being at all mine
16 and my brother's games, my dad driving him to and from the
17 ballpark. Later down the line, that turned into an awesome
18 friendship. My dad took time -- took him out to eat and shop
19 at the mall for every birthday and every Christmas. He
20 always made sure that Eugene had new clothes, enough food in
21 his frig, and money in his pocket.

22 Eugene became a part of our family. As I got older
23 and understood, Eugene was mentally handicapped, and my dad
24 took the time to really be his friend. When Eugene passed,
25 my dad was the one that spoke at his funeral, and when he got

1 the news, it's one of the few times I've seen my dad choked
2 up and truly sad and emotional. That story right there is
3 who Bart Reagor is.

4 My wife and I had our first child, Harper, last
5 July. My wife's dad passed in October, which absolutely
6 devastated our family. It kills me that she won't get to
7 know my wife's dad because he was such an awesome man. Now I
8 worry that she will not -- not get to know my dad.

9 My sister had her first child, Anna, in July as
10 well. Those two little girls deserve their grandfather, and
11 they will be positively influenced by Bart's presence in
12 their lives.

13 The same fact applies for everyone else. I believe
14 the world would be positively influenced and a better place
15 with him in it. Thank you for the opportunity to get to
16 share some words on behalf of my hero.

17 **THE COURT:** Thank you, Mr. Reagor. And the Court
18 will add that to the written statement you submitted as
19 Page 069.

20 At this point, Mr. Markham, does the Court need to
21 do any additional record work in identifying the character
22 statements submitted?

23 The Court did find that they were timely, that they
24 should be admitted as exhibits to the sentencing hearing. I
25 typically read aloud the names of all of those character

1 statements, but, here, there is a document that you supplied
2 entitled "Index of Character Letters Submitted on Behalf of
3 Defendant Bart Wade Reagor."

4 If the Court deems admitted everything by reference
5 to that index, is that sufficient?

6 **MR. MARKHAM:** Yes, Your Honor. That's perfectly
7 sufficient, and we have nothing to add to what's been
8 submitted.

9 **THE COURT:** Okay. At this point, the Court will
10 recess for a lunch break and to allow the Government and
11 Defense Counsel opportunity to regroup.

12 We'll return for the defendant's allocution. That
13 will be followed by final argument and then the sentencing
14 decision of the Court.

15 The Court stands in recess until 1:30. Counsel are
16 instructed to keep their phones at the ready and to remain in
17 the proximity of the courthouse. We stand in recess.

18 **COURT SECURITY OFFICER:** All rise.

19 **(Recess.)**

20 **THE COURT:** We are back on the record in Criminal
21 Action No. 2:21-CR-25-Z-BR-01.

22 At this point, we will move to defendant's
23 allocution. Let me first explain to the defendant the nature
24 of allocution and your rights related to allocution, and then
25 you will be afforded a full and complete opportunity to

1 exercise that right if you choose to do so.

2 Allocution means that you may tell this Court any
3 information you think the Court should hear and consider
4 before it decides and imposes sentence. You may read aloud a
5 prepared written statement. You may make an argument. You
6 may draw attention to facts in the sentencing file in the
7 case. You may make any statement you deem necessary to this
8 Court's sentencing decision, but you may not be compelled to
9 allocute. You cannot be forced to exercise your right to
10 allocution.

11 Mr. Markham, does your client intend to exercise
12 his right of allocution at this time?

13 **MR. MARKHAM:** He does, Your Honor.

14 **THE COURT:** Okay. Mr. Reagor, you may proceed, and
15 you may do so from counsel table or the podium, whatever you
16 find most comfortable.

17 **THE DEFENDANT:** I'll go up there if that's all
18 right.

19 **THE COURT:** Yes. Please approach.

20 **THE DEFENDANT:** Yes, sir. How are you doing?

21 Your Honor, thank you for the opportunity to say a
22 few words on my own behalf.

23 First off, I want to thank God, my family, and the
24 many loyal friends for their love and support, but most of
25 all for their belief in me. I am very thankful for that.

1 God has been walking beside me as I've advanced my
2 career for my family and my team. I'm very thankful for that
3 too. He has also been with me and my family every day since
4 this situation began.

5 I know I'm far from perfect, but I'm a very
6 thankful person and a man of great faith in God. My favorite
7 Bible verse is Mark 9:23: All things are possible for those
8 that believe.

9 I've been blessed in many ways. I've always
10 dreamed big and been able to accomplish big things. In the
11 Bible, Jesus says in Mark 9:23, if I can, when somebody asked
12 him if he could do something, and then he says: All things
13 are possible for those that believe.

14 It might surprise you that every day when I got to
15 my office the first thing that I did is I got my notepad out,
16 and I wrote down G and J, which stood for God and Jesus.
17 Then I wrote down TY for thank you. And then I wrote down
18 UM, and it was use me, guide me, protect me, love me, inspire
19 me, teach me, bless me, anoint me, energize me, and empower
20 me. I always wanted God to guide me every day.

21 Your Honor, I'm also very empathetic, sympathetic,
22 and truly very, very sorry for any sorrow, any pain, any
23 hardship, any grief, any financial burden, any hassle, any
24 waste of time, any job loss, any money loss, or anything
25 negative that the Reagor-Dykes sudden collapse in 2018 has

1 caused any innocent person who had nothing to do with
2 creating this disaster. My own family and I have seen how
3 this situation has been a very heavy weight to bear.

4 As Your Honor knows, I have maintained my innocence
5 of the crime for which I'm convicted. I know from my lawyers
6 that I could -- that I could, and they think I should, take a
7 different approach, but it is my honest view that I am not
8 guilty.

9 But by saying that, I mean no disrespect to this
10 Court. If I have said anything to offend the Court, please
11 forgive me. And sentence me -- in sentencing me, I ask Your
12 Honor take my whole life into consideration. I've been
13 generous and kind. I've never physically hurt anyone. I'm
14 not a danger to anyone. And while I know I talk tough and
15 loud, I would never physically harm anyone.

16 I plan to change -- challenge my conviction on
17 appeal, as is my right. I will know that, if I try to flee
18 and not show up to prison, I would lose that chance, and
19 given what that appeal means to me and because I do not run
20 from anything and because of how badly that would hurt so
21 many people who believe in me, I would never do that.

22 Thank you for hearing from me.

23 **THE COURT:** Thank you. And you may return to
24 counsel table, and the Court will give appropriate weight to
25 that allocution.

1 At this time, I will invite final argument by the
2 Government and the Defendant.

3 The Court has carried forward the pending motions
4 for variance, both for upward variance by the Government and
5 downward variance by the Defendant. You may make any final
6 arguments to those pending motions, and then, as always, any
7 arguments relevant to the Section 3553(a) factors that the
8 Court is tasked with applying to this case.

9 Mr. Haag, you may begin.

10 **MR. HAAG:** Thank you, Your Honor. I'll be brief
11 with my final argument, Your Honor.

12 We have put before the Court in written form and
13 with the presentation here this morning all of our reasons
14 for recommending an upward departure in this case, and we
15 have no further briefing on that.

16 Should the Court follow through with its intent to
17 deny our Motion for Upward Departure, we would respectfully
18 recommend a sentence of 168 months, which would be the top of
19 the advisory guideline range.

20 Second, in light of the many statements as to the
21 defendant's health conditions that were made here this
22 morning, the United States would not oppose a recommendation
23 to FMC Fort Worth. That is the federal medical center in
24 Fort Worth. That is the closest medical center to Lubbock
25 and to West Texas, and that facility would be able to treat

1 Parkinson's disease as well as any other health conditions
2 that the defendant may have.

3 No further evidence, Your Honor, or argument, Your
4 Honor. Thank you.

5 THE COURT: And thank you, Mr. Haag. I will give
6 appropriate weight to that argument and also the arguments
7 made in the Government's motions, which were timely filed and
8 will be incorporated as well.

9 Mr. Markham, you may proceed with any final
10 argument you deem necessary.

11 MR. MARKHAM: Thank you, Your Honor. Let me start
12 by the area of agreement. I thank the Government. He talked
13 about it, about the Fort Worth recommendation for medical
14 treatment. I think that's very appropriate, and that would
15 be the good thing to do given the illnesses and its proximity
16 to his family with whom, as you've seen, he remains very,
17 very close.

18 Your Honor, I gave my argument when I was
19 responding to the variance points and to the points that the
20 Government made in the slide, and I won't repeat them.

21 The only thing I can leave the Court with is a
22 final thought, is that by way of measuring a man for his
23 life, for his 57 years, a lot more of it is reflected in the
24 stories of the people who came to the podium and of all the
25 people who didn't come to the podium but who are here, and

1 the additional people who couldn't be here and who gave the
2 statements, which are compelling.

3 Those speak louder than any lawyer's words, so I
4 won't try to better them. I submit those as my final
5 argument for a downward variance.

6 And if the Court were to vary downward, it would be
7 in the Court's discretion as to an appropriate sentence. If
8 the Court does not vary downward, then I would urge that the
9 low end of this guideline range is over a decade in prison.
10 It gives him a life. It certainly deters. It certainly
11 punishes. It sends a message.

12 It is proportionate with the higher of the
13 sentences, assuming you thought that the consideration was
14 that the people who got the lesser sentences for their
15 activity at Reagor-Dykes deserved less. This is higher by
16 any measure, but it will give him a life to come back to,
17 hope, hope for his family, and be adequate.

18 Of course, I'm arguing for lower, but that would be
19 my argument within the guideline range. Thank you, Your
20 Honor, for hearing from us.

21 **THE COURT:** Thank you, Mr. Markham. And the Court
22 thanks you for your capable and effective representation in
23 this matter.

24 I find that the Court benefited from exceptional
25 briefing both by the Government and by the Defendant in this

1 case, and for that reason, the Court was well apprised of all
2 the issues, the guidelines, the application notes, and the
3 caselaw that the Court needed to make the sentencing decision
4 today.

5 MR. MARKHAM: Thank you, Your Honor. As a strange
6 place, this is a nice place to be. Thank you.

7 THE COURT: Okay. Okay. At this point, Mr. Haag,
8 does the Government know of any reason why this Court should
9 not and cannot impose sentence at this time?

10 MR. HAAG: No, Your Honor.

11 THE COURT: Does Counsel for the Defendant know of
12 any reason why the Court should not and cannot impose
13 sentence at this time?

14 MR. MARKHAM: No, Your Honor.

15 THE COURT: Having considered the permissible
16 factors set forth at 18 U.S.C. Section 3553(a), the advisory
17 sentencing guidelines, the conduct admitted in the Factual
18 Resumé, the capable and effective and, in fact, impeccable
19 assistance of counsel that the defendant received, and all
20 mitigating and aggravating factors, it is the judgment of the
21 Court that the defendant, Bart Wade Reagor, is hereby
22 committed to the custody of the Federal Bureau of Prisons for
23 a period of 168 months.

24 This represents a sentence within the advisory
25 guidelines range, and the Court thereby denies the pending

1 motions for variance, Government's Conditional Motion for
2 Upward Variance set forth in ECF Document No. 142, and
3 Defendant's Motion for a Downward Variance set forth in ECF
4 Documents No. 144 and 145.

5 The Court does not order a fine because the
6 defendant lacks the financial resources or future earning
7 capacity to pay a fine.

8 The Court does order a mandatory special assessment
9 of \$100, which is due and payable immediately.

10 Regarding forfeiture, pursuant to 18 U.S.C.
11 Section 924(d) and 28 U.S.C. Section 2461(c), and subject to
12 the provisions of 21 U.S.C. Section 853(n), it is hereby
13 ordered that defendant's interest in the following property
14 is hereby condemned and forfeited to the United States:

15 \$1,760,000 in the form of a money judgment.

16 Pursuant to 21 U.S.C. Section 853(p), defendant shall forfeit
17 the \$950,951.18 in United States currency seized by the FBI
18 on November 2nd, 2018 from Prosperity Bank account numbers
19 ending in 569 as a substitute asset.

20 Regarding restitution, the Court does order
21 defendant to pay restitution in the total amount of
22 \$9,378,817.28.

23 Restitution is payable to the United States
24 District Clerk, 205 Southeast Fifth Avenue, Amarillo, Texas
25 79101 for disbursement as follows: IBC Bank in the amount of

1 \$9,378,817.28.

2 Restitution shall be payable immediately, but, if
3 upon commencement of the term of supervised release, any part
4 of the \$9,378,817.28 ordered by this judgment remains unpaid,
5 the defendant shall make payments on such unpaid balance at
6 the rate of at least \$1,500 per month.

7 Payment shall begin no later than sixty days after
8 the defendant's release from confinement and another payment
9 to be made on the same day of each month thereafter until the
10 restitution is paid in full.

11 Now, regarding supervised release, the Court
12 further orders that, upon release from imprisonment, the
13 defendant shall be placed on supervised release for a term of
14 five years.

15 While on supervised release, defendant shall comply
16 with the mandatory conditions which are listed at 18 U.S.C.
17 Section 3583(d) and Section 5D1.3(a) of the Guidelines
18 Manual, the standard conditions which are listed at
19 Section 5D1.3(c) of the Guidelines Manual, and the following
20 discretionary, special, and additional conditions which are
21 derived from Sections 5D1.3(b), (d), and (e) of the
22 Guidelines Manual:

23 No. 1. The defendant shall not be self-employed or
24 employed by, affiliated with, own or control, or otherwise
25 participate, directly or indirectly, in the business of

1 automobile sales without the probation officer's approval.

2 No. 2. You must not incur new credit charges or
3 open additional lines of credit without the approval of the
4 probation officer until restitution is paid in full.

5 No. 3. You must provide the probation officer with
6 access to any requested business or personal financial
7 information and authorize the release of any financial
8 information. The probation office may share financial
9 information with the United States Attorney's Office until
10 restitution is paid in full.

11 No. 4. Pursuant to 18 U.S.C. Section 3663A, the
12 defendant shall immediately pay restitution to the following
13 victim: IBC Bank in the amount of \$9,378,817.28.

14 Restitution is payable to the U.S. District Clerk,
15 205 Southeast Fifth Street, Amarillo, Texas 79101 for
16 disbursement.

17 If, upon commencement of the term of supervised
18 release, the defendant has not paid the restitution in full,
19 the defendant shall make payments on such unpaid balance
20 beginning sixty days after release from custody at a rate of
21 at least 1500 per month until the restitution is paid in
22 full.

23 No. 5. The defendant shall not transfer, sell,
24 give away, or otherwise convey any asset with a value of \$500
25 or more without the approval of the probation officer.

1 And No. 6. The above drug-testing condition is
2 suspended based on the Court's determination that the
3 defendant poses a low risk of future substance abuse.

4 Mr. Markham, the conditions of supervised release
5 were set forth in the written Notice of Intent to Impose
6 Condition -- Conditions of Supervised Release. Did you
7 receive a timely copy of that notice?

8 **MR. MARKHAM:** I did, Your Honor, and I believe my
9 client, Mr. Reagor, and I both executed it after we read it
10 and discussed it.

11 **THE COURT:** Okay. Are you confident that your
12 client fully understands the conditions of supervised release
13 set forth in that written notice and pronounced orally by the
14 Court today?

15 **MR. MARKHAM:** I am, Your Honor.

16 **THE COURT:** And, Mr. Reagor, I will ask you
17 directly, do you agree to be bound by the conditions of
18 supervised release set forth in this written notice and
19 pronounced orally by the Court today?

20 **THE DEFENDANT:** Yes, sir.

21 **THE COURT:** Okay. And, Mr. Haag, did the
22 Government receive an advanced timely copy of that Notice of
23 Intent to Impose Conditions of Supervised Release?

24 **MR. HAAG:** Yes, Your Honor, it did.

25 **THE COURT:** Does the Government have any objections

1 to the conditions of supervised release stated in that
2 written notice and pronounced aloud in court today?

3 MR. HAAG: No, Your Honor.

4 THE COURT: The Court did receive and did review a
5 fully executed copy of the notice. It is dated March 16,
6 2022. It bears the signature of the defendant, Defense
7 Counsel, and this Court. It is made a part of the record in
8 this case and in any record on appeal.

9 The notice and conditions of supervised release
10 stated therein are hereby adopted, imposed, and ordered as
11 just pronounced by the Court.

12 Now, pursuant to 18 U.S.C. Section 3553(c)(1),
13 because the defendant's advisory guidelines range exceeded
14 twenty-four months, the Court will state its reasons for
15 imposing sentence within a particular point in that range.

16 The sentence is sufficient, but not greater than
17 necessary, to comply with the statutory purposes set forth at
18 18 U.S.C. Section 3553(a), specifically the aforementioned
19 3553(a) factors and facts relied on by the Court when it
20 adjudicated the motions for upward and downward variance.
21 The Court incorporates those reasons here as well as the
22 aforementioned mitigating factors balanced against the
23 aggravating factors and facts.

24 Regarding supervision, the Court did impose a term
25 of supervised release because it will provide an added

1 measure of deterrence and protection.

2 In light of the Fifth Circuit's recent opinion in
3 *Diggles*, this Court expressly adopted, imposed, and ordered
4 the discretionary conditions of supervised release because
5 they are consistent with 18 U.S.C. Sections 3583(d)(1),
6 (d)(2), and (d)(3).

7 And this Court expressly states that the
8 conditions -- the discretionary conditions set forth in the
9 notice and pronounced orally by the Court involve no greater
10 deprivation of liberty than is reasonably necessary, as
11 required by Sections 3553(a)(2)(B), (a)(2)(C), and (a)(2)(D).

12 Now, the Court has now stated the sentence and its
13 reasons therefor.

14 Does the Government have any objection to the
15 sentence as stated by the Court?

16 MR. HAAG: No, Your Honor.

17 THE COURT: Does the Defendant have any objections
18 to the sentence as stated by the Court?

19 MR. MARKHAM: No, Your Honor, other than already in
20 the record.

21 THE COURT: Okay. Any timely-filed written
22 objections were admitted into this sentencing hearing. I
23 find that they are preserved for appellate review.

24 And is there any other finding I need to make on
25 any --

1 **MR. MARKHAM:** Your Honor, no objections.

2 **THE COURT:** Okay. Understood. So no objections to
3 the procedural or substantive reasonableness of the sentence?

4 **MR. MARKHAM:** None, Your Honor.

5 **THE COURT:** Okay. Now, the Court has stated
6 sentence at this point.

7 And with the clarification from counsel on the
8 objections that are preserved for appellate review, does the
9 Government know of any reason why sentence may not be
10 imposed?

11 **MR. HAAG:** No, Your Honor.

12 **THE COURT:** And does Defendant know of any reason
13 why the sentence should not be imposed?

14 **MR. MARKHAM:** No, Your Honor.

15 **THE COURT:** The Court hereby orders the sentence
16 imposed as stated.

17 Finally, even if the correct advisory guidelines
18 range was not considered, the Court would have imposed the
19 same sentence had it not made the error, and it would have
20 done so for the same reasons given during the sentencing
21 hearing regardless and irrespective of the applicable
22 advisory guidelines range.

23 To be pellucidly clear and consistent with the
24 Supreme Court's guidance in *Molina-Martinez versus United*
25 *States*, 578 U.S. 189, the Court is not silent on what it

1 might have done had the guidelines range been correct and the
2 starting point different.

3 Even had defendant prevailed on his objections to
4 relevant conduct loss amount, abuse of trust enhancement,
5 aggravating role enhancement, or had the Government persuaded
6 the Court to apply Section 1B1.3(a)(1)(B) relevant conduct to
7 the floor-plan fraud, and the sophisticated means enhancement
8 pursuant to Section 2B1.1(b)(10)(c), this Court would have
9 imposed the same sentence for its same reasons, 168 months'
10 imprisonment, followed by a five-year term of supervised
11 release.

12 Now, as I promised Mr. Reagor's family, Mr.
13 Markham, I will provide maximal latitude for requested
14 recommendations on continued medical care, any diagnostic
15 medical work that needs to be done. I will consider possible
16 recommendations for placement in a federal medical center, or
17 FMC.

18 PSR Paragraphs 158 through 166 report a number of
19 physical health conditions. Some were referenced during the
20 sentencing today. I'm inclined to recommend an initial
21 medical diagnostic review to identify those treatments that
22 should continue and the BOP facility that is most available
23 and appropriate to those treatments.

24 What medical recommendations or rehabilitation
25 recommendations would you request?

1 **MR. MARKHAM:** Your Honor, I would request that
2 review that you have suggested, because the doctors could say
3 better what you do. I do know he has Parkinson's disease.

4 I have heard -- I haven't seen the medical records,
5 but I have heard from his family that it's progressive and
6 not getting better, and that he has reactions to the medicine
7 when he takes it; then he calms down, and he gets through the
8 day. He has to take the medicine four times a day.

9 What my recommendation would be, is to adopt the
10 Court's suggestion that -- or the Court's inclination as
11 stated, that the Court would allow for a diagnostic so that
12 he could get a good recommendation.

13 We have yet to discuss whether he will be on
14 release pending his surrender, but were he to be on release,
15 we would go to his doctor he's had for a long time that's got
16 him on a protocol to get a written suggestion of a protocol
17 that would meet the realities of prison, which would be
18 different. That would be one reason to allow him to stay
19 out. I would ask for that.

20 And, other than that, I think if he gets something
21 from his doctor, and then he goes to a diagnostic, they will
22 know where to best put him given the options that are
23 available within the Bureau of Prisons.

24 **THE COURT:** Given his anticipated security
25 classification and eligibility, I imagine he would be

1 eligible for the lowest possible setting, satellite prison
2 camp, things of that nature, but I will make a recommendation
3 for FMC or a federal medical consider [sic] if you think that
4 should be prioritized against any other considerations, like
5 proximity to family or -- or any other concerns involving his
6 diagnostic review, his medical treatment, and his
7 rehabilitation.

8 And I -- as a lifelong resident of Fort Worth, I'm
9 happy to grant FMC Fort Worth as a requested recommendation.
10 It seems that the Government is unopposed to that. That
11 might satisfy all of the concerns that are reflected in PSR
12 Paragraphs 158 through 166.

13 MR. MARKHAM: May I --

14 THE COURT: Do you want --

15 MR. MARKHAM: -- confer just for one second with --

16 THE COURT: Yeah. And the question to counsel is,
17 do you want me to combine the residential recommendation with
18 the medical recommendation and recommend that FMC Fort Worth
19 be the correct facility?

20 MR. MARKHAM: Yes, Your Honor, that's -- that's
21 good.

22 THE COURT: Okay.

23 MR. MARKHAM: Thank you.

24 THE COURT: Because, in essence, that kills two
25 birds with one stone, addresses some of the medical

1 conditions, and then also the requested proximity to family
2 and friends?

3 MR. MARKHAM: Yes.

4 THE COURT: Okay. Any objection from the
5 Government?

6 MR. HAAG: No, Your Honor.

7 THE COURT: This Court does recommend in sequence
8 that the defendant be allowed to participate in a full
9 medical diagnostic review to address the serious physical
10 conditions which are reflected in PSR Paragraph 158 through
11 165, with particular attention to the Parkinson diagnosis and
12 treatments reflected in PSR Paragraph 160.

13 The Court further recommends that the defendant be
14 allowed to continue the medication regimen that's reflected
15 in that PSR paragraph and the pharmaceutical drugs that are
16 listed therein and in consultation with his doctor and
17 physician.

18 The Court recommends that the Bureau of Prisons
19 consider placement in a federal medical center, or FMC, to
20 address his significant medical and physical conditions, and,
21 if possible, and deemed consistent with his security
22 classification and eligibility, FMC Fort Worth.

23 Now, that leaves, Mr. Markham, your requested
24 recommendation on continued vocational training and
25 education.

1 The defendant is manifestly intelligent. He has
2 college degrees. He's managed large enterprises and
3 business. I'm inclined to grant any requested education or
4 continued course work that you would request from this Court
5 and to include even post-graduate work if it's available.

6 **(Attorney/client sotto-voce conference.)**

7 **MR. MARKHAM:** Your Honor, I -- we don't have any
8 request in that regard.

9 **THE COURT:** Okay. I'll just make a general
10 recommendation that he be allowed to participate in any
11 continuing education consistent with his security
12 classification and eligibility.

13 **MR. MARKHAM:** Thank you, Your Honor.

14 **THE COURT:** Any objection from the Government?

15 **MR. HAAG:** No, Your Honor.

16 **THE COURT:** That is the Court's recommendation on
17 continued vocational and educational care.

18 Now, Mr. Haag, the Court notes that there is a
19 three-count indictment in this case. The jury acquitted
20 defendant on Counts One and Two and found him guilty on Count
21 Three.

22 I don't imagine that there are any pending
23 indictments or charges that need to be dismissed, but I want
24 to give you the opportunity to do so, if necessary.

25 **MR. HAAG:** The Court is correct, Your Honor. There

1 is no additional charges to be disposed of.

2 **THE COURT:** Thank you for that clarification.

3 Now, Mr. Reagor, I do want to discuss and explain
4 your remaining rights of appeal. During your allocution, you
5 said that this was an important process and that you do
6 intend to exercise that right, so I want you to be well
7 apprised of your remaining appellate rights.

8 **THE DEFENDANT:** Thank you.

9 **THE COURT:** If you do exercise that right to
10 appeal, your Notice of Appeal must be filed with this Court
11 within 14 days of the date judgment is entered in your case
12 or within 14 days of the Government entering its Notice of
13 Appeal.

14 If you do elect to appeal, you have the absolute
15 right to apply for leave to appeal in forma pauperis, or IFP.
16 This may mean that you are allowed to prosecute your appeal
17 at a cost to the government, if you are unable to pay the
18 cost of that appeal.

19 And, Mr. Markham, did you and your client receive
20 the Notice of Right to Appeal prior to this hearing?

21 **MR. MARKHAM:** We did, Your Honor. We discussed it,
22 and we have both signed a copy of it and given it back to
23 your courtroom deputy.

24 **THE COURT:** Okay. If you'll approach, I believe
25 the copy may still be on your desk, not my desk. If you can

1 approach with the executed copy, we'll make that part of the
2 record.

3 MR. MARKHAM: You're right. Sorry. I take that
4 back.

5 THE COURT: Mr. Markham, I know you are new to this
6 court, but the answer always is that Victoria is correct if
7 you want to get anywhere with my chambers.

8 (Laughter.)

9 THE COURT: Okay. Mr. Haag, did the Government
10 receive a timely copy of this Notice of Right to Appeal?

11 MR. HAAG: Yes, Your Honor, it did.

12 THE COURT: And does the Government have any
13 objections to the remaining appellate rights described in
14 that notice and arising under the Plea Agreement?

15 MR. HAAG: No, Your Honor.

16 THE COURT: The Court did receive and did review a
17 fully executed copy of that Notice of Right to Appeal. It is
18 dated March 10, 2022. It bears the signature of the
19 defendant, Defense Counsel, and this Court. It is made a
20 part of the record in this case and in any record on appeal.

21 Now, Mr. Reagor, I want to finally admonish you
22 that the Notice of Right to Appeal explains and summarizes
23 your remaining appellate rights. It is not the Notice of
24 Appeal. When you elect to exercise that right, there's a
25 separate filing. It's called a Notice of Appeal.

1 Please consult with your attorney, and he'll
2 explain the deadlines and deliverables, but be careful that
3 that happens within that 14-day period that we discussed. Do
4 you understand?

5 **THE DEFENDANT:** Yes, sir. Thank you.

6 **THE COURT:** Okay. Now, I requested briefing from
7 the parties regarding the relevant danger and flight risk
8 factors set forth at 18 U.S.C. Section 3143(b)(1)(A).
9 Defendant complied in Document No. 150, and the Government
10 complied in Document No. 151.

11 On balance, the Court finds that the Defendant has
12 the stronger arguments, but this Court does have one
13 follow-up question for Defense Counsel.

14 Though Section 3143(b)(1)(A) references any other
15 person, DOJ and Bureau of Prisons data reflect that white-
16 collar defendants are at greater risk for self harm.

17 I just want to make certain that you don't perceive
18 that the danger contemplated by that statute includes any
19 danger of self harm or that the defendant may harm himself in
20 any way, not because I've seen anything in the file or in his
21 countenance today to reflect that, but I want to be
22 absolutely certain that that's not a concern.

23 **MR. MARKHAM:** Your Honor, I have seen nothing, and
24 admittedly I've not known Mr. Reagor for very long, but I've
25 had very intimate, lengthy conversations with him. I've had

1 conversations with his loved ones.

2 I give it no chance that he would harm himself, and
3 I've seen nothing that would indicate to that. I know what
4 he's going to do. He's going to start bugging me about the
5 appeal right away, and that's going to be his focus until the
6 day that he has to go to Fort Worth or wherever they
7 designate him.

8 **THE COURT:** Okay. I detected the same during
9 defendant's allocution.

10 Mr. Haag, is the Government persuaded that the
11 defendant has the necessary support systems in place to
12 prevent self harm, the necessary family, friends, church, and
13 community so that that's not a concern for the Government?

14 **MR. HAAG:** That is correct, Your Honor.

15 **THE COURT:** Okay. With that assurance stated on
16 the record from both Defense Counsel and the Government, the
17 Court finds by clear and convincing evidence that the
18 defendant is not likely to flee or pose a danger to the
19 safety or any other person or the community if released.

20 At this point, we'll turn now to a reporting date
21 and time. The Bureau of Prisons and Marshals typically
22 request 45 days for processing. So looking at the calendar,
23 I tentatively selected April 25th, 2022, but I am amenable to
24 a later date, if necessary, to accommodate medical treatment
25 or any family events.

1 **MR. MARKHAM:** Your Honor, if -- we appreciate that.
2 If we could get, not 45, but 60 days to make sure we can get
3 all the medical testing done that we need to get, get to the
4 doctor about the medical record, get a whole package, which I
5 believe it's a package he can take when he reports. Just
6 that extra cushion.

7 Obviously, it's almost extra time in prison,
8 because he knows what he has to face, and he's not even
9 starting it, so it's not really much of a benefit, except
10 medically it would be helpful to have that cushion. Thank
11 you.

12 **THE COURT:** Okay. Any objection from the
13 Government?

14 **MR. HAAG:** No, Your Honor.

15 **THE COURT:** And, Mr. Markham, do you agree that
16 Monday, May 9, would provide that additional cushion for
17 medical treatment and care?

18 **MR. MARKHAM:** I do, Your Honor.

19 **THE COURT:** I believe that gives you the
20 approximate effect of fifteen days, so Monday, May 9?

21 **MR. MARKHAM:** Yes, Your Honor, I agree.

22 **THE COURT:** Okay. And does the Government have any
23 objection to that proposed reporting date?

24 **MR. HAAG:** No, Your Honor.

25 **THE COURT:** The defendant shall surrender for

1 service of sentence at the institution designated by the
2 Bureau of Prisons before 2:00 p.m., Central Daylight Time, on
3 Monday, May 9th, 2022, as notified by the United States
4 Marshal or as notified by the pretrial office at his own
5 expense.

6 Mr. Reagor, I admonish you that failure to appear
7 or report for service of sentence is a separate criminal
8 offense under 18 U.S.C. Section 3146(a)(2), so please closely
9 coordinate with your Defense Counsel to arrive at the
10 designated institution on the right date at the right time.
11 Do you understand?

12 **THE DEFENDANT:** Yes, sir.

13 **THE COURT:** Okay. Now, does the Government object
14 to the defendant remaining on the present conditions of
15 release until he self-surrenders for sentence?

16 **MR. HAAG:** No, Your Honor.

17 **THE COURT:** The Court hereby orders that the
18 defendant must abide by the present conditions of release
19 until he surrenders for service of sentence at the designated
20 institution at the appointed date and time.

21 And this is consistent with the statement of the
22 United States Probation Officer that defendant is on bond and
23 has complied with the conditions of pretrial supervision.
24 That officer also found that defendant does not appear to be
25 a risk of danger.

1 So, for those reasons, the Court does order the
2 current conditions of release to be continued until service
3 of sentence.

4 Is there anything further from the Government?

5 **MR. HAAG:** No. Thank you, Your Honor.

6 **THE COURT:** Is there anything further from the
7 Defendant?

8 **MR. MARKHAM:** No, Your Honor. Thank you.

9 **THE COURT:** We are adjourned in this case. The
10 parties and counsel are excused, and the Court stands in
11 recess for the remainder of the day.

12 **COURT SECURITY OFFICER:** All rise.

13 **(End of Sentencing Proceedings for 03/10/2022.)**

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18 I certify that the foregoing is a correct transcript
19 from the record of proceedings in the above-entitled matter.
20 I further certify that the transcript fees format comply with
21 those prescribed by the Court and the Judicial Conference of
22 the United States.

23

24 s/Stacy Mayes Morrison
25 Stacy Mayes Morrison
 Official Court Reporter

5/9/2022
Date